

**Elhady Plaintiffs**  
**MSJ Exhibit 25**



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# Transcript of Timothy P. Groh, Designated Representative

**Date:** March 1, 2018

**Case:** El Hady, et al. -v- Kable, et al.

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Conducted on March 1, 2018

<p style="text-align: right;">1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF VIRGINIA</p> <p>3 ALEXANDRIA DIVISION</p> <p>4 - - - - - x</p> <p>5 ANAS EL HADY, ET : 6 AL., : 7 Plaintiffs, : Case No. 16-cv-00375 8 v. : 9 CHARLES H. KABLE, : 10 Director of the : 11 Terrorist Screening : 12 Center; in his : 13 official capacity, : 14 et al., : 15 Defendants. : 16 - - - - - x</p> <p>17 Videotaped Deposition of Terror Screening Center 18 By and through its Designated Representative 19 TIMOTHY P. GROH 20 Washington, D.C. 21 Thursday, March 1, 2018 22 9:07 a.m.</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFFS:</p> <p>3 GADEIR ABBAS, ESQUIRE 4 LENA MASRI, ESQUIRE 5 CAROLYN HOMER, ESQUIRE 6 Council on American-Islamic Relations 7 453 New Jersey Avenue, SE 8 Washington, D.C. 20003 9 202-742-6423</p> <p>10 11</p> <p>12 ON BEHALF OF THE DEFENDANT CHARLES H. 13 KABLE:</p> <p>14 ANTONIA KONKOLY, ESQUIRE 15 United States Attorney's Office 16 2100 Jamieson Avenue 17 Alexandria, Virginia 22314-5702 18 703-299-3799</p> <p>19 20 21 22</p>
<p style="text-align: right;">2</p> <p>1 Deposition of TIMOTHY P. GROH, held at the 2 offices of:</p> <p>3 4</p> <p>5 Department of Homeland Security 6 20 Massachusetts Avenue, N.W. 7 Washington, D.C. 20001</p> <p>8 9</p> <p>10 11 12</p> <p>13 Pursuant to Notice, before Carla L. Andrews, 14 Notary Public in and for the District of Columbia.</p> <p>15 16 17 18 19 20</p> <p>21 Job No.: 180014 22 Pages: 1 - 389</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCE CONTINUED:</p> <p>2 AMY POWELL, ESQUIRE (via phone) 3 U.S. DEPARTMENT OF JUSTICE 4 310 New Bern Avenue 5 Federal Building, Suite 800 6 Raleigh, North Carolina 27601 7 202-514-9836</p> <p>8</p> <p>9 DENA M. ROTH, ESQUIRE 10 U.S. DEPARTMENT OF JUSTICE 11 20 Massachusetts Avenue, N.W. 12 Room 7112 13 Washington, D.C. 20529-2099</p> <p>14</p> <p>15 JENNIFER GREENBAND, ESQUIRE 16 KEVIN HOULIHAN, ESQUIRE (via phone) 17 U.S. Department of Justice 18 601 12th Street, South 19 Arlington, Virginia 20598</p> <p>20 21 22</p>

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<p>1 APPEARANCES (CONTINUED):</p> <p>2 JAYME KANTOR, ESQUIRE</p> <p>3 YEORA PARK, ESQUIRE</p> <p>4 U.S. Department of Justice</p> <p>5 935 Pennsylvania Avenue, N.W.</p> <p>6 Suite 10140</p> <p>7 Washington, D.C. 20535</p> <p>8 202-324-7194</p> <p>9 ALSO PRESENT:</p> <p>10 KEVIN BOGUCKI, Terror Screening Center</p> <p>11 Law Unit</p> <p>12 MELISSA PACHIKARA, FBI</p> <p>13 JOSEPH CLARK, U.S. Customs and Border</p> <p>14 Protection</p> <p>15 JOE DONOHUE, Videographer</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins disk</p> <p>4 number one in the videotaped deposition of Timothy</p> <p>5 Paul Groh in the matter of Elhady, et al. versus</p> <p>6 Kable, et al, in the District Court for the Eastern</p> <p>7 District of Virginia, Case No. 16 CV-375. Today's</p> <p>8 date is March 1, 2018, and the time on the video</p> <p>9 monitor is 9:07 a.m. The videographer for today is</p> <p>10 Joe Donohoe representing Planet Depos. This</p> <p>11 videotaped deposition is taking place at 20</p> <p>12 Massachusetts Avenue, Northwest, Washington, D.C.</p> <p>13 Would counsel please voice-identify</p> <p>14 themselves and state whom they represent?</p> <p>15 MR. ABBAS: This is Gadeir Abbas. I am</p> <p>16 here for the plaintiffs.</p> <p>17 MS. KONKOLY: Antonia Konkoly, for the</p> <p>18 Department of Justice.</p> <p>19 MR. BOGUCKI: Kevin Bogucki, Terror</p> <p>20 Screening Center Law Unit.</p> <p>21 MS. GREENBAND: Jennifer Greenband,</p> <p>22 Transportation Security Administration.</p>
<p>1 CONTENTS</p> <p>2 EXAMINATION OF TIMOTHY P. GROH PAGE</p> <p>3 By Mr. Abbas 7</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 (Attached to transcript)</p> <p>7 DEPOSITION EXHIBIT PAGE</p> <p>8 A -- Overview of Watchlisting Process 325</p> <p>9 and Procedures</p> <p>10 B -- Defendants' Objections to 350</p> <p>11 Interrogatories</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 MS. KANTOR: Jayme Kantor, FBI.</p> <p>2 MS. PARK: Yeora Park, TSC.</p> <p>3 MS. PACHIKARA: Melissa Pachikara, FBI.</p> <p>4 MR. CLARK: Joseph Clark, U.S. Customs</p> <p>5 and Border Protection.</p> <p>6 MS. ROTH: Dena Roth, Department of</p> <p>7 Justice.</p> <p>8 MS. HOMER: And Carolyn Homer, for the</p> <p>9 plaintiffs.</p> <p>10 THE VIDEOGRAPHER: The court reporter</p> <p>11 today is Carla Andrews representing Planet Depos.</p> <p>12 Would the court reporter please swear in</p> <p>13 the witness?</p> <p>14 Thereupon,</p> <p>15 TIMOTHY P. GROH,</p> <p>16 was called as a witness and, after being duly sworn</p> <p>17 by the notary, was examined and testified as</p> <p>18 follows:</p> <p>19 EXAMINATION BY COUNSEL</p> <p>20 FOR PLAINTIFFS</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Good morning, Mr. Groh.</p>

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<p>9</p> <p>1 <b>A. Good morning.</b></p> <p>2 Q. Am I pronouncing your name correctly?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. My name is Gadeir Abbas. I am an</p> <p>5 attorney representing the plaintiffs in this action.</p> <p>6 Today I am going to take your deposition. Before I</p> <p>7 begin questioning you, I am going to provide an</p> <p>8 overview that I am sure your attorneys have already</p> <p>9 provided, but I feel obligated to provide now. Do</p> <p>10 you understand that your obligation today is to tell</p> <p>11 the truth?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. And during the course of the deposition,</p> <p>14 I will be asking you questions. And because my</p> <p>15 words and your words are being typed, I will ask</p> <p>16 that even if you know what the question is going to</p> <p>17 be that you wait until the very end of my question</p> <p>18 to respond.</p> <p>19 <b>A. Certainly.</b></p> <p>20 Q. That's not like normal conversations. So</p> <p>21 unfortunately, despite our best efforts, we will on</p> <p>22 occasion interrupt each other. And I apologize in</p>	<p>11</p> <p>1 Q. When was the Terror Screening Center</p> <p>2 created?</p> <p>3 <b>A. It was created in late 2003.</b></p> <p>4 Q. Who created the Terror Screening Center?</p> <p>5 MS. KONKOLY: Objection. Vague.</p> <p>6 THE WITNESS: The TSC was created by the</p> <p>7 attorney general at that time.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Why did the attorney general create the</p> <p>10 Terror Screening Center?</p> <p>11 <b>A. The attorney general was reacting to the</b></p> <p>12 <b>best of my understanding to HSPD-6 -- Homeland or</b></p> <p>13 <b>HSPD-6, which was a presidential order -- an</b></p> <p>14 <b>executive order directing the attorney general to</b></p> <p>15 <b>consolidate the terror watch list.</b></p> <p>16 Q. Does HSPD-6 govern the operation of the</p> <p>17 Terror Screening Center?</p> <p>18 MS. KONKOLY: Objection. Calls for a</p> <p>19 legal conclusion.</p> <p>20 THE WITNESS: I am not sure what you mean</p> <p>21 by govern.</p> <p>22 BY MR. ABBAS:</p>
<p>10</p> <p>1 advance for any interruptions I make. But let's</p> <p>2 just do our best to not interrupt each other?</p> <p>3 <b>A. Of course.</b></p> <p>4 Q. Is there any reason why you are unable to</p> <p>5 provide truthful testimony today?</p> <p>6 <b>A. No.</b></p> <p>7 Q. What is your understanding of why you are</p> <p>8 here?</p> <p>9 <b>A. I am here to provide testimony on behalf</b></p> <p>10 <b>of the Terror Screening Center about TSA procedures</b></p> <p>11 <b>and activities.</b></p> <p>12 Q. You understand that testimony you provide</p> <p>13 today is binding as to the agency?</p> <p>14 <b>A. I do.</b></p> <p>15 Q. Great. What is the Terror Screening</p> <p>16 Database? I am sorry. What is the Terror Screening</p> <p>17 Center?</p> <p>18 <b>A. The Terror Screening Center is an</b></p> <p>19 <b>interagency center entity administered by the FBI</b></p> <p>20 <b>but on behalf of the U.S. Government to maintain the</b></p> <p>21 <b>mentioned TSDB, otherwise known as the terror</b></p> <p>22 <b>watch list for the U.S. Government.</b></p>	<p>12</p> <p>1 Q. Does the Terror Screening Center operate</p> <p>2 in accordance with HSPD-6?</p> <p>3 MS. KONKOLY: Objection. Calls for a</p> <p>4 legal conclusion.</p> <p>5 THE WITNESS: I think it operates</p> <p>6 consistently with HSPD-6. But I would say that</p> <p>7 there are many other orders and policies, procedures</p> <p>8 that also govern what we do.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Does the Terror Screening Center operate</p> <p>11 in any manner that's inconsistent with HSPD-6?</p> <p>12 MS. KONKOLY: Objection. Vague.</p> <p>13 Objection calls for a legal conclusion.</p> <p>14 THE WITNESS: Not that I can think of.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Is it the Terror Screening Center's</p> <p>17 testimony today that HSPD-6 guides what Terror</p> <p>18 Screening Center does?</p> <p>19 MS. KONKOLY: Objection.</p> <p>20 Mischaracterizes prior testimony. Calls for a legal</p> <p>21 conclusion.</p> <p>22 THE WITNESS: The HSPD-6, as previously</p>

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<p style="text-align: right;">13</p> <p>1 stated in my previous answer, established and gave</p> <p>2 rise to it. But there have been many subsequent</p> <p>3 executive orders and other direction from the</p> <p>4 attorney general that modifies that. So I think</p> <p>5 there's a whole constellation of authorities that</p> <p>6 govern what we do.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does another agency control the Terror</p> <p>9 Screening Center?</p> <p>10 MS. KONKOLY: Objection. Vague.</p> <p>11 THE WITNESS: Again, what do you mean by</p> <p>12 control?</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Can another federal government agency</p> <p>15 tell the Terror Screening Center what to do?</p> <p>16 MS. KONKOLY: Objection. Vague.</p> <p>17 THE WITNESS: The Terror Screening Center</p> <p>18 is an interagency body, which works to facilitate</p> <p>19 the mission of many other agencies. So to say that</p> <p>20 can another agency order us -- is that what you are</p> <p>21 saying? Tell us to do something we don't want to</p> <p>22 do?</p>	<p style="text-align: right;">15</p> <p>1 <b>A. Because in the service of our other</b></p> <p>2 <b>partners, both from the nominations and the</b></p> <p>3 <b>encounter side of things, we work to facilitate</b></p> <p>4 <b>their mission. Our policies and procedures</b></p> <p>5 <b>generally are governed by whatever the current Watch</b></p> <p>6 <b>Listing Guidance is, which is promulgated by an</b></p> <p>7 <b>interagency -- you know, the Watch Listing Advisory</b></p> <p>8 <b>Council, which certainly includes many, many other</b></p> <p>9 <b>parties other than the FBI. Generally, that council</b></p> <p>10 <b>works through consensus. If there is ultimately a</b></p> <p>11 <b>disagreement, then that's going to be handled</b></p> <p>12 <b>through other processes. And the FBI, of course, is</b></p> <p>13 <b>also part of that.</b></p> <p>14 Q. As an aside, Mr. Groh, at times you will</p> <p>15 hear me say Arizona. At times you will hear me say</p> <p>16 Indiana. I am just making notes to myself in the</p> <p>17 transcript. So please excuse me. What agencies are</p> <p>18 a part of the Watch Listing Advisory Council?</p> <p>19 MS. KONKOLY: Objection. A complete</p> <p>20 answer to that question would implicate law</p> <p>21 enforcement and potentially state secrets</p> <p>22 privileges. But you can answer to the extent that</p>
<p style="text-align: right;">14</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Sure. Let me ask you that. Can another</p> <p>3 agency command the Terror Screening Center to do</p> <p>4 something?</p> <p>5 MS. KONKOLY: Objection. Vague.</p> <p>6 THE WITNESS: The Terror Screening Center</p> <p>7 is administered by the FBI, so that our chain of</p> <p>8 command goes through the FBI.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. So the FBI can tell the Terror Screening</p> <p>11 Center what to do?</p> <p>12 MS. KONKOLY: Objection.</p> <p>13 Mischaracterized prior testimony.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I will withdraw my question. Can the FBI</p> <p>16 tell the Terror Screening Center what to do?</p> <p>17 MS. KONKOLY: Objection. Vague. Go</p> <p>18 ahead.</p> <p>19 THE WITNESS: Generally, yes.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Please elaborate on why you attach the</p> <p>22 qualification generally to your answer.</p>	<p style="text-align: right;">16</p> <p>1 you can without waiving either of those.</p> <p>2 THE WITNESS: Sure. It is basically made</p> <p>3 up of agencies that are involved in either</p> <p>4 nominating identities to the Terror Screening</p> <p>5 Database or that then screen from our database.</p> <p>6 That would certainly include our colleagues from</p> <p>7 both of those pools of organizations. It does</p> <p>8 include, of course, TSA. It does include the FBI.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. You can go ahead.</p> <p>11 <b>A. And it includes, for instance, members of</b></p> <p>12 <b>the intelligence community. But I can't get into</b></p> <p>13 <b>more detail as to specifics with that.</b></p> <p>14 Q. I am going -- I don't think you answered</p> <p>15 the question. What agencies comprise the Watch</p> <p>16 Listing Advisory Council?</p> <p>17 MS. KONKOLY: I am going to assert the</p> <p>18 same objection that a comprehensive answer to that</p> <p>19 question would implicate the law enforcement</p> <p>20 privilege. I believe the witness has already</p> <p>21 answered to the extent that he can without waiving</p> <p>22 the privilege. To the extent there is anything</p>

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<p>17</p> <p>1 further to add, you can answer. Otherwise, I will</p> <p>2 further object that the question has been asked and</p> <p>3 answered.</p> <p>4 MR. ABBAS: Just so that I -- I apologize</p> <p>5 for interrupting. Just so the record is clear, are</p> <p>6 you asserting the law enforcement privilege and the</p> <p>7 state secrets privilege over the names of the</p> <p>8 agencies that comprise the Watch Listing Advisory</p> <p>9 Council?</p> <p>10 MS. KONKOLY: Over a comprehensive list</p> <p>11 of all agencies, yes.</p> <p>12 MR. ABBAS: But there are some agencies</p> <p>13 that you are not asserting the law enforcement and</p> <p>14 state secrets privilege?</p> <p>15 MS. KONKOLY: I am asserting it over a</p> <p>16 comprehensive list.</p> <p>17 MR. ABBAS: And it's -- the assertion is</p> <p>18 of the law enforcement privilege and the state</p> <p>19 secrets privilege?</p> <p>20 MS. KONKOLY: And potentially the state</p> <p>21 secrets.</p> <p>22 BY MR. ABBAS:</p>	<p>19</p> <p>1 MS. KONKOLY: It has been asked and</p> <p>2 answered. I will state that objection and --</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Is the Terror Screening Center a member</p> <p>5 of the Watch Listing Advisory Council?</p> <p>6 MS. KONKOLY: Same objections. You can</p> <p>7 answer.</p> <p>8 THE WITNESS: I said already yes.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is the FBI a member of the Watch Listing</p> <p>11 Advisory Council?</p> <p>12 MS. KONKOLY: I am going to again assert</p> <p>13 the same privileges. A comprehensive list of</p> <p>14 everyone on the Advisory Council interagency council</p> <p>15 would implicate the state secret -- potentially the</p> <p>16 state secrets privilege and the law enforcement</p> <p>17 privilege. We can't proceed agency by agency in</p> <p>18 this manner, because to do so would ultimately</p> <p>19 result in that comprehensive list.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. I am going to ask --</p> <p>22 MS. KONKOLY: However, I will allow the</p>
<p>18</p> <p>1 Q. Is the Terror Screening Center a -- do</p> <p>2 you call the agency members of the Watch Listing</p> <p>3 Advisory Council? What's the language that the</p> <p>4 inter-agencies use?</p> <p>5 <b>A. Yes, I would say members.</b></p> <p>6 Q. Is the Terror Screening Center a member</p> <p>7 of the Watch Listing Advisory Council?</p> <p>8 MS. KONKOLY: Objection. Potentially it</p> <p>9 calls for information in the -- that would fall</p> <p>10 within the parameters of the law enforcement,</p> <p>11 potentially state secrets privilege. We cannot go</p> <p>12 agency by agency because that would ultimately</p> <p>13 result in a comprehensive list of everyone. So we</p> <p>14 cannot proceed in that manner without calling those</p> <p>15 privileges into play. However --</p> <p>16 MR. ABBAS: He has already answered. He</p> <p>17 has already said that the Terror Screening Center is</p> <p>18 part of Watch Listing Advisory Council?</p> <p>19 MS. KONKOLY: Okay. Then that question</p> <p>20 has been asked and answered.</p> <p>21 MR. ABBAS: Are you instructing him not</p> <p>22 to answer?</p>	<p>20</p> <p>1 witness to answer the question to the extent that he</p> <p>2 believes he can without waiving those privileges as</p> <p>3 to this particular agency.</p> <p>4 MR. ABBAS: I will just ask that the</p> <p>5 defendant's counsel not engage in speaking</p> <p>6 objections. Just make the objections. If you want</p> <p>7 to instruct him not to answer, you are free to do</p> <p>8 that.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is the FBI a member of the Watch Listing</p> <p>11 Advisory Council?</p> <p>12 MS. KONKOLY: All the same objection that</p> <p>13 I just stated.</p> <p>14 THE WITNESS: In this case, yes.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Is the TSA a member of the Watch Listing</p> <p>17 Advisory Council?</p> <p>18 MS. KONKOLY: I am going to again object</p> <p>19 on the basis of law enforcement privilege,</p> <p>20 potentially state secrets privilege. A</p> <p>21 comprehensive list of everybody on the council would</p> <p>22 implicate those privileges. However, you can answer</p>

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<p style="text-align: right;">21</p> <p>1 that question to the extent that you believe you</p> <p>2 can. You cannot go too much further down this road</p> <p>3 or I will need to instruct him not to answer.</p> <p>4 THE WITNESS: I don't believe I can go</p> <p>5 any further.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Is CDP a member of the Watch Listing</p> <p>8 Advisory Council?</p> <p>9 MS. KONKOLY: I am going to assert the</p> <p>10 law enforcement and potentially the state secrets</p> <p>11 privilege and on that basis instruct the witness not</p> <p>12 to answer.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is the National Security Agency a member</p> <p>15 of the Watch Listing Advisory Council.</p> <p>16 MS. KONKOLY: I am going to object on the</p> <p>17 basis of the law enforcement privilege and</p> <p>18 potentially the state secrets privilege. On the</p> <p>19 basis of those privileges, I am going to instruct</p> <p>20 the witness not to answer.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. You are not answering?</p>	<p style="text-align: right;">23</p> <p>1 through a bunch of these. Is the Department of the</p> <p>2 Air Force a member of the Watch Listing Advisory</p> <p>3 Council?</p> <p>4 MS. KONKOLY: I am going to object on the</p> <p>5 basis of law enforcement privilege, potentially</p> <p>6 state secrets privilege. On the basis of those</p> <p>7 privileges, I am going to instruct the witness not</p> <p>8 to answer.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is the Department of Justice a member of</p> <p>11 the Watch Listing Advisory Council.</p> <p>12 MS. KONKOLY: I am going to object on the</p> <p>13 basis of the law enforcement privilege, potentially</p> <p>14 the state secrets privilege. On the basis of those</p> <p>15 privileges, I am going to instruct the witness not</p> <p>16 to answer.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. How does an agency become a member of the</p> <p>19 Watch Listing Advisory Council?</p> <p>20 MS. KONKOLY: I am going to object.</p> <p>21 Vague, potentially law enforcement, potential state</p> <p>22 secrets. You can answer to the extent you can.</p>
<p style="text-align: right;">22</p> <p>1 <b>A. That's correct.</b></p> <p>2 Q. Is the Department of Homeland Security a</p> <p>3 member of the Watch Listing Advisory Council?</p> <p>4 MS. KONKOLY: I am going to object on the</p> <p>5 basis of law enforcement privilege, potentially</p> <p>6 state secrets privilege. On the basis of those</p> <p>7 privileges, I am going to instruct the witness not</p> <p>8 to answer.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. You are not answering?</p> <p>11 <b>A. I am not answering.</b></p> <p>12 Q. Is the NCTC a member of the Watch Listing</p> <p>13 Advisory Council?</p> <p>14 MS. KONKOLY: I am going to object on the</p> <p>15 basis of law enforcement privilege and potentially</p> <p>16 the state secrets privilege. And on the basis of</p> <p>17 those privileges, I am going to instruct the witness</p> <p>18 not to answer.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. You are not answering?</p> <p>21 <b>A. I am not answering.</b></p> <p>22 Q. And I apologize. We just have to go</p>	<p style="text-align: right;">24</p> <p>1 THE WITNESS: I believe the guidance</p> <p>2 itself stipulates to certain members. And I think</p> <p>3 other agencies who believe that they may have</p> <p>4 equities in the watch listing and screening process</p> <p>5 could make their desire known. And then I think the</p> <p>6 Watch Listing Advisory Council would decide whether</p> <p>7 or not an additional party could join.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does an agency have final authority over</p> <p>10 what the Watch Listing Advisory Council does?</p> <p>11 MS. KONKOLY: Objection. Vague.</p> <p>12 Objection. Potentially calls for law enforcement</p> <p>13 privileged information. You can answer to the</p> <p>14 extent you can.</p> <p>15 THE WITNESS: Do you mean does a</p> <p>16 particular agency?</p> <p>17 MR. ABBAS: Could you read back the</p> <p>18 question.</p> <p>19 (The record was read.)</p> <p>20 MS. KONKOLY: Same objections.</p> <p>21 THE WITNESS: I believe I already</p> <p>22 testified that we will work via a consensus. So</p>



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<p style="text-align: right;">25</p> <p>1 there is no agency. It is a body that comes 2 together to hopefully reach consensus. 3 BY MR. ABBAS: 4 Q. Does an agency lead the Watch Listing 5 Advisory Council? 6 MS. KONKOLY: Objection. Vague. 7 Objection. Potentially calls for law enforcement 8 information. You can answer to extent that you can. 9 THE WITNESS: There are -- without 10 getting into details as to who they are, there are 11 two agencies that lead it, one of which is I will 12 say is the TSC. 13 BY MR. ABBAS: 14 Q. What is the other agency that leads the 15 Watch Listing Advisory Council? 16 MS. KONKOLY: Objection. Calls for law 17 enforcement privileges. Calls for potentially state 18 secrets. You can answer if you believe you can. 19 THE WITNESS: I don't believe I can 20 answer. 21 BY MR. ABBAS: 22 Q. Is it the defendant that leads -- that</p>	<p style="text-align: right;">27</p> <p>1 THE WITNESS: It creates a forum for 2 interagency discussion about how the watch listing 3 and screening enterprise functions amongst the 4 different agencies. 5 BY MR. ABBAS: 6 Q. Does the Watch Listing Advisory Council 7 produce the Watch Listing Guidance? 8 MS. KONKOLY: Objection. Vague. 9 Objection. Potentially law enforcement. But you 10 can answer to the extent you can. 11 THE WITNESS: If you mean by produce 12 effectively write that guidance, yes. 13 BY MR. ABBAS: 14 Q. The Watch Listing Advisory Council writes 15 the Watch Listing Guidance? 16 MS. KONKOLY: Objection. 17 Mischaracterizes prior testimony. Go ahead. 18 BY MR. ABBAS: 19 Q. I am sorry. Let me just -- 20 <b>A. Please.</b> 21 Q. Is it TSC's testimony today that the 22 Watch Listing Advisory Council writes and publishes</p>
<p style="text-align: right;">26</p> <p>1 co-leads the Watch Listing Advisory Council? 2 MS. KONKOLY: I'm sorry. I didn't hear 3 that question. 4 BY MR. ABBAS: 5 Q. The Terror Screening Center is the 6 defendant. Is the other leader of the Watch Listing 7 Advisory Council a defendant? 8 MS. KONKOLY: I am going to object on the 9 same grounds. Potentially law enforcement and 10 potentially state secrets. You can answer if you 11 can. 12 THE WITNESS: I don't know exactly who 13 all the defendants are. But even if it is, I don't 14 believe I can answer that. 15 BY MR. ABBAS: 16 Q. We have asked for all defendants. What 17 does the Watch Listing Advisory Council do? 18 MS. KONKOLY: Objection. Vague. 19 Objection. Potentially calls for law enforcement or 20 state secrets. It's a privileged comprehensive 21 answer. But you can answer to the extent you 22 believe you can.</p>	<p style="text-align: right;">28</p> <p>1 the Watch Listing Guidance? 2 MS. KONKOLY: Objection. Vague. 3 Objection. Potentially law enforcement. You can 4 answer if you can. 5 THE WITNESS: When I say writes, I mean 6 there is interagency discussion to agree to 7 language. So from that definition of write, yes. 8 And if you mean publish, if you mean then provides 9 that to U.S. Government's entities and then 10 participate in that process, the answer would also 11 be yes. 12 BY MR. ABBAS: 13 Q. How does the Watch Listing Advisory 14 Council act? Would it like vote to finalize the 15 Watch Listing Guidance? 16 MS. KONKOLY: Objection. Potentially law 17 enforcement. You can -- objection. Vague. You can 18 answer if you can. 19 THE WITNESS: Generally, it is going to 20 work by unanimous consent. 21 BY MR. ABBAS: 22 Q. Has the Watch Listing Guidance -- is the</p>

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<p style="text-align: right;">29</p> <p>1 current Watch Listing Guidance that TSC utilizes the</p> <p>2 product of the unanimous consensus of the Watch</p> <p>3 Listing Advisory Council?</p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 Objection. Potentially law enforcement sensitive.</p> <p>6 But you can answer if you can.</p> <p>7 THE WITNESS: I wasn't at the TSC when</p> <p>8 the most recent guidance was promulgated. But to</p> <p>9 the best of my knowledge, yes.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. What are the functions of the Terror</p> <p>12 Screening Center?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Potentially law enforcement and state</p> <p>15 secrets in a comprehensive answer. But you can</p> <p>16 answer to the extent that you can.</p> <p>17 THE WITNESS: Generally, it is to</p> <p>18 consolidate the U.S. Government's approach to</p> <p>19 terrorist watch listing, to build and maintain the</p> <p>20 Terror Screening Database, and to provide that to</p> <p>21 appropriate screening agencies in support of their</p> <p>22 various missions.</p>	<p style="text-align: right;">31</p> <p>1 that you can.</p> <p>2 THE WITNESS: I don't believe there is</p> <p>3 anything additional I can say that's not privileged.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Going back to the Watch Listing Advisory</p> <p>6 Council, when did the Watch Listing Advisory Council</p> <p>7 come into existence?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 THE WITNESS: I don't know the precise</p> <p>10 answer to that.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Did the Watch Listing Advisory Council</p> <p>13 come into existence before 2005?</p> <p>14 MS. KONKOLY: Objection. Vague.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Did the Watch Listing Advisory Council</p> <p>18 come into existence before 2010?</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 THE WITNESS: I believe so, but I don't</p> <p>21 know precisely beyond that.</p> <p>22 BY MR. ABBAS:</p>
<p style="text-align: right;">30</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does TSC serve a function that's</p> <p>3 unrelated to the Terror Screening Database?</p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 Objection. Potentially law enforcement sensitive.</p> <p>6 But you can answer to the extent that you can.</p> <p>7 THE WITNESS: Can you restate the</p> <p>8 question? Do we do --</p> <p>9 MR. ABBAS: Can you read back the</p> <p>10 question?</p> <p>11 (The record was read.)</p> <p>12 MS. KONKOLY: Same objections.</p> <p>13 THE WITNESS: I would say that is by far</p> <p>14 our bigger function. Beyond that, I think -- I</p> <p>15 don't think I can go into detail.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. What functions does the Terror Screening</p> <p>18 Center serve that are unrelated to the Terror</p> <p>19 Screening Database?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 Objection. Potentially calls for law enforcement</p> <p>22 sensitive information. You can answer to the extent</p>	<p style="text-align: right;">32</p> <p>1 Q. So it is your testimony today -- Indiana.</p> <p>2 Is it TSC's testimony today that the Watch Listing</p> <p>3 Advisory Council came into existence prior to 2010?</p> <p>4 <b>A. I believe so.</b></p> <p>5 Q. When did the Watch Listing Advisory</p> <p>6 Council produce the first version of the Watch</p> <p>7 Listing Guidance?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Objection. Potentially law enforcement. You can</p> <p>10 answer to the extent that you can.</p> <p>11 THE WITNESS: To the best of my</p> <p>12 knowledge, sometime around 2008, but I am not sure</p> <p>13 before that. I would say by 2008.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. So it is the Terror Screening Center's</p> <p>16 testimony that by 2008 the Watch Listing Advisory</p> <p>17 Council had published a Watch Listing Guidance?</p> <p>18 MS. KONKOLY: Objection.</p> <p>19 Mischaracterized his prior testimony.</p> <p>20 THE WITNESS: To the best of my</p> <p>21 knowledge, yes.</p> <p>22 BY MR. ABBAS:</p>

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<p>33</p> <p>1 Q. The title of that first Watch Listing</p> <p>2 Guidance, was the title of that first Watch Listing</p> <p>3 Guidance Watch Listing Guidance 2008?</p> <p>4 MS. KONKOLY: Objection. Potentially</p> <p>5 calls for law enforcement or potentially state</p> <p>6 secrets information. But you can answer to the</p> <p>7 extent that you can.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. And just to clarify, I am just asking for</p> <p>10 the title of the document.</p> <p>11 MS. KONKOLY: Okay.</p> <p>12 THE WITNESS: I am not sure. Quite</p> <p>13 honestly, I was trying to think if I was, but I am</p> <p>14 actually not sure. This is all quite before my</p> <p>15 time.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Sure. But you are testifying on behalf</p> <p>18 of the Terror Screening Center?</p> <p>19 <b>A. Sure.</b></p> <p>20 Q. Was it the Watch Listing Advisory</p> <p>21 Council's practice to revise and publish new</p> <p>22 versions of the Watch Listing Guidance each year</p>	<p>35</p> <p>1 of times it has been updated.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Has the Watch Listing Guidance been</p> <p>4 updated more than 10 times since the Watch Listing</p> <p>5 Advisory Council has first published the Watch</p> <p>6 Listing Guidance?</p> <p>7 MS. KONKOLY: I am going to make the same</p> <p>8 objections. Potentially law enforcement and</p> <p>9 potentially state secrets. And I will, again, note</p> <p>10 that I am not sure that this is clearly within the</p> <p>11 scope. And if at a certain point we continue to</p> <p>12 press this line of questioning, I may need to</p> <p>13 instruct not to answer. But for now you can go</p> <p>14 ahead and answer.</p> <p>15 THE WITNESS: Yeah, I don't think I -- I</p> <p>16 don't think I can, the precise number of times or</p> <p>17 even a characterization of within along these lines.</p> <p>18 I just don't think I will be able to answer that.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Have there been years where the Watch</p> <p>21 Listing Advisory Council has not updated the Watch</p> <p>22 Listing Guidance?</p>
<p>34</p> <p>1 since 2008?</p> <p>2 MS. KONKOLY: I am going to object on the</p> <p>3 basis of potentially law enforcement, potentially</p> <p>4 state secrets, and also state an objection based on</p> <p>5 the scope of the topics that we are limited to</p> <p>6 today. But I will allow the witness to answer to</p> <p>7 the extent that he can.</p> <p>8 THE WITNESS: I think the only thing I</p> <p>9 can say about that is that it is periodically</p> <p>10 updated.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. How many times has the Watch Listing</p> <p>13 Guidance been updated by the Watch Listing Advisory</p> <p>14 Council?</p> <p>15 MS. KONKOLY: I am going to make the same</p> <p>16 objections. Potentially law enforcement,</p> <p>17 potentially state secrets. And I will again note</p> <p>18 scope issue. I am not sure if this is clearly</p> <p>19 within the scope that we are proceeding on today,</p> <p>20 but I will allow the witness to answer if he can.</p> <p>21 THE WITNESS: I don't think I can,</p> <p>22 without getting into privilege, get into the number</p>	<p>36</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Calls for law enforcement sensitive</p> <p>3 information. You can answer to the extent that you</p> <p>4 can.</p> <p>5 THE WITNESS: Same answer. I can't</p> <p>6 answer that.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. You can't tell me -- what's the basis for</p> <p>9 -- I am sorry. Just so the record is real clear,</p> <p>10 what's the basis for the objection to him answering</p> <p>11 whether the Watch Listing Guidance has been updated</p> <p>12 every single year?</p> <p>13 MS. KONKOLY: The categories that we have</p> <p>14 designated don't necessarily entail every change to</p> <p>15 the Watch Listing Guidance going back to the</p> <p>16 beginning of the inception of the council.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Fair enough. Let me try a different way.</p> <p>19 Have there been multiple revisions to the Watch</p> <p>20 Listing Guidance since 2008?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And those revisions are the product of</p>

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<p>37</p> <p>1 the Watch Listing Advisory Council's consultative 2 process?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And the Watch Listing Guidance has been 5 the product of the Watch Listing Advisory Council's 6 unanimous consensus each time it has been issued?</p> <p>7 <b>A. To the best of my knowledge, yes.</b></p> <p>8 Q. What is the Terror Screening Database? I 9 am sorry. A few more questions on the Terror 10 Screening Center. The Terror Screening Center, you 11 said, was created in 2003?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Was there -- did the Watch Listing 14 Advisory Council exist in 2003?</p> <p>15 <b>A. Pursuant to my previous answer, I don't 16 know precisely when that body was composed. I know 17 the attorney general directed the FBI to stand up 18 Terror Screening Center in 2003. I don't know the 19 precise sequence of events following that.</b></p> <p>20 Q. And you might not know, and that's fine. 21 You know, if you don't know, that's a reasonable 22 answer. But just for the clarity of the record, did</p>	<p>39</p> <p>1 previously.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 MR. ABBAS: Indiana.</p> <p>4 I will just note, for the record, that 5 the Magistrate Judge Anderson made it really clear 6 in the hearing a few weeks ago that he quote, thinks 7 there needs to be some discussion as to how this has 8 evolved over time if that has evolved over time and 9 what period of time. Quote, this has to be put in 10 some context of a continuum, not just on the day 11 that the deposition gets taken.</p> <p>12 MS. KONKOLY: And I would note, for the 13 record, that that discussion was in the context of 14 measures to improve the reliability and accuracy of 15 the watch listing process. And we are prepared to 16 testify about that today, but we do not understand 17 that instruction to cover every iteration Watch 18 Listing Guidance going back to 2003. So at a 19 certain point, I will need to invoke the protective 20 order.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. What is the Terror Screening Database?</p>
<p>38</p> <p>1 the Watch Listing Advisory Council exist in 2003? 2 MS. KONKOLY: Objection. Asked and 3 answered.</p> <p>4 THE WITNESS: I don't know when it was 5 established, so.</p> <p>6 MR. ABBAS: Indiana.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Did the Watch Listing Advisory Council 9 produce a Watch Listing Guidance in 2003?</p> <p>10 MS. KONKOLY: Objection. I am going to 11 object on the basis of the scope of the topics we 12 have before us today and also potential law 13 enforcement sensitive information. You can answer 14 if you can.</p> <p>15 THE WITNESS: I think I have. If I don't 16 know if it existed, I wouldn't know if it did 17 something.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Is there a Watch Listing Guidance as old 20 as 2003?</p> <p>21 MS. KONKOLY: Objection. Asked and 22 answered. And same objections as I stated</p>	<p>40</p> <p>1 MS. KONKOLY: Objection. Vague. 2 Objection. Potentially it calls for law enforcement 3 sensitive information or state secrets privilege. 4 But you can answer to the extent that you can.</p> <p>5 THE WITNESS: The Terror Screening 6 Database is the consolidated watch list with respect 7 to terrorism for the United States Government.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Who owns the Terror Screening Database? 10 MS. KONKOLY: Objection. Vague.</p> <p>11 THE WITNESS: If you mean who is 12 responsible to maintain it, ownership, I think, 13 maybe has different connotations. But if I take it 14 that that is your meaning, it is administered by the 15 Terror Screening Center.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Who controls the Terror Screening 18 Database?</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 THE WITNESS: The Terror Screening 21 Center.</p> <p>22 BY MR. ABBAS:</p>

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<p style="text-align: right;">41</p> <p>1 Q. It was TSC's testimony today that the FBI</p> <p>2 controls the Terror Screening Center; is that</p> <p>3 correct?</p> <p>4 MS. KONKOLY: Objection.</p> <p>5 Mischaracterizes his prior testimony. Objection.</p> <p>6 Vague.</p> <p>7 THE WITNESS: It is by direction of the</p> <p>8 attorney general administered by the FBI. But see</p> <p>9 my prior testimony with regard to the role of the</p> <p>10 Watch Listing Advisory Council.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Does the FBI control the Terror Screening</p> <p>13 Database?</p> <p>14 MS. KONKOLY: Objection. Asked and</p> <p>15 answered. Objection vague.</p> <p>16 THE WITNESS: The FBI administers the</p> <p>17 Terror Screening Center. The Terror Screening</p> <p>18 Center administers the TSDB.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Can the FBI tell the Terror Screening</p> <p>21 Center what to do with the Terror Screening</p> <p>22 Database?</p>	<p style="text-align: right;">43</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 THE WITNESS: The director of the Terror</p> <p>3 Screening Center.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. And what's his name?</p> <p>6 A. <b>Charles Kable.</b></p> <p>7 Q. Does he have a boss?</p> <p>8 A. <b>He does.</b></p> <p>9 Q. Who is his boss?</p> <p>10 A. <b>The executive assistant director for the</b></p> <p>11 <b>National Security of the FBI.</b></p> <p>12 Q. Can the executive assistant director -- I</p> <p>13 am sorry. What was the title one more time?</p> <p>14 A. <b>Executive assistant director for National</b></p> <p>15 <b>Security.</b></p> <p>16 Q. So the executive assistant director for</p> <p>17 National Security of the FBI is the boss of the head</p> <p>18 of the Terror Screening Center, correct?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. Can the boss of the Terror Screening</p> <p>21 Center's head tell the Terror Screening Center head</p> <p>22 what to do?</p>
<p style="text-align: right;">42</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Asked and answered.</p> <p>3 THE WITNESS: I think that's an over</p> <p>4 simplification of my prior testimony.</p> <p>5 MR. ABBAS: There is a question. Can you</p> <p>6 read back the question?</p> <p>7 (The record was read.)</p> <p>8 MS. KONKOLY: Same objections. And I</p> <p>9 will add -- sorry. I lost my train of thought.</p> <p>10 Mischaracterizes prior testimony.</p> <p>11 THE WITNESS: I go back to my same</p> <p>12 answer. The form you put that leading question in</p> <p>13 assumes certain things I have not testified to. And</p> <p>14 my answer is it is more complex than that.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. So I will ask leading questions. And</p> <p>17 if --</p> <p>18 A. <b>I know. And I will answer them as -- and</b></p> <p>19 <b>I will answer them as --</b></p> <p>20 Q. You haven't answered it. So just let's</p> <p>21 -- let me try asking it a different way. Who is the</p> <p>22 person in charge of the Terror Screening Center?</p>	<p style="text-align: right;">44</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Asked and answered. Objection.</p> <p>3 Misleading.</p> <p>4 THE WITNESS: Again, I think we are at</p> <p>5 the same place we were before. Yes. And there is</p> <p>6 also an important role for the Watch Listing</p> <p>7 Advisory Council and the interagency to play in</p> <p>8 governing how the Terror Screening Center functions.</p> <p>9 If the -- if there is disagreement, then those</p> <p>10 disagreements would be resolved through the National</p> <p>11 Security Council.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. They wouldn't be resolved through the</p> <p>14 Watch Listing Advisory Council?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection.</p> <p>17 THE WITNESS: Going with this construct,</p> <p>18 then the situation you are describing is whether</p> <p>19 there is not consensus with the terrorist with the</p> <p>20 Watch Listing Advisory Council. Disagreements</p> <p>21 within when the consensus can't be reached are</p> <p>22 resolved through National Security Council</p>

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<p style="text-align: right;">45</p> <p>1 processes.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Is the Watch Listing Advisory Council</p> <p>4 advisory or can it tell the Terror Screening Center</p> <p>5 what to do?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 THE WITNESS: Since I have already</p> <p>8 testified that the Terror Screening Center is a</p> <p>9 member of the Watch Listing Advisory Council, that</p> <p>10 would mean there is not a consensus within the</p> <p>11 council. And, again, that would go to the national</p> <p>12 security process. And, certainly, the</p> <p>13 administration through the national security process</p> <p>14 can tell the TSC what to do.</p> <p>15 Q. So the National Security Council ask tell</p> <p>16 the Terror Screening Center what to do?</p> <p>17 MS. KONKOLY: Objection.</p> <p>18 Mischaracterizes priors testimony. Objection</p> <p>19 misleading. Objection. Vague. You can answer if</p> <p>20 you can.</p> <p>21 THE WITNESS: As part of the Executive</p> <p>22 Branch of the U.S. Government, yes.</p>	<p style="text-align: right;">47</p> <p>1 that question is posed in the exact same terms.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Sure. So I am going to pose it in a</p> <p>4 little different terms. In what sense is the</p> <p>5 executive assistant director of the National</p> <p>6 Security of the FBI the boss of the head of the</p> <p>7 Terror Screening Center?</p> <p>8 <b>A. I think that's really, really broad and</b></p> <p>9 <b>vague, hard to answer. I would say that he is the</b></p> <p>10 <b>boss in the sense that that is normally generally</b></p> <p>11 <b>thought of with the caveat that there are --</b></p> <p>12 <b>basically, if higher management in the FBI</b></p> <p>13 <b>instructed the Terror Screening Center to do</b></p> <p>14 <b>something that was contrary to the consensus reached</b></p> <p>15 <b>by the Watch Listing Advisory Council, there is a</b></p> <p>16 <b>process to go higher in the government to resolve</b></p> <p>17 <b>those differences. And even though the Terror</b></p> <p>18 <b>Screening Center is administered by the FBI, it is</b></p> <p>19 <b>truly an interagency center. And it is a complex --</b></p> <p>20 <b>what I am trying to explain is it is complex. There</b></p> <p>21 <b>is not a simple answer to your question.</b></p> <p>22 Q. Yeah, I agree that it is complex. And so</p>
<p style="text-align: right;">46</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Can the EPA tell the Terror Screening</p> <p>3 Center what to do?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Okay. Can the FBI tell the Terror</p> <p>6 Screening Center what to do?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 Objection. Misleading. Objection. Asked and</p> <p>9 answered. This question has been posed five times</p> <p>10 at this point. And I may need to start instructing</p> <p>11 the witness not to answer if it is asked again.</p> <p>12 MR. ABBAS: And I am just struggling to</p> <p>13 understand. So I apologize for -- the repetition is</p> <p>14 for my sake. And I apologize for covering ground</p> <p>15 that I might have already covered. I just want to</p> <p>16 make sure that I have a clear understanding of how</p> <p>17 the Terror Screening Center works.</p> <p>18 MS. KONKOLY: I am just going to note,</p> <p>19 for the record, that I believe that is the fourth or</p> <p>20 fifth time that exact question has been asked. I</p> <p>21 will allow the witness to answer one more time.</p> <p>22 After that, I am going to instruct not to answer of</p>	<p style="text-align: right;">48</p> <p>1 has there ever been a disagreement between TSC and</p> <p>2 the FBI as to how to administer the Terror Screening</p> <p>3 Database?</p> <p>4 MS. KONKOLY: I am going to object</p> <p>5 insofar as that calls for deliberative process</p> <p>6 information within the deliberative process</p> <p>7 privilege. You can answer to the extent that you</p> <p>8 can.</p> <p>9 THE WITNESS: I don't think I can get</p> <p>10 into specifics. But I think I can say that yes, we</p> <p>11 have had disagreements with our FBI colleagues from</p> <p>12 time to time.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Has the National Security Council</p> <p>15 resolved disagreements between the FBI and TSC</p> <p>16 regarding the TSDB?</p> <p>17 MS. KONKOLY: Objection. Vague.</p> <p>18 Objection. Potentially deliberative process.</p> <p>19 Objection. Potentially law enforcement. You can</p> <p>20 answer to extent that you can.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. And just to clarify, I am just asking for</p>

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<p style="text-align: right;">49</p> <p>1 decisions of the National Security Council. Has the</p> <p>2 National Security Council ever made decisions that</p> <p>3 resolved differences of opinion between the Terror</p> <p>4 Screening Center and the FBI as to how the TSDB</p> <p>5 should be maintained and operated?</p> <p>6 MS. KONKOLY: Same objection. But you</p> <p>7 can answer.</p> <p>8 THE WITNESS: Not to my knowledge.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. So in the history of the Terror Screening</p> <p>11 Center, there has never been a disagreement between</p> <p>12 the Terror Screening Center and the FBI that the</p> <p>13 National Security Council has made a decision to</p> <p>14 resolve?</p> <p>15 MS. KONKOLY: I am going to object.</p> <p>16 Mischaracterized his prior testimony. I am going to</p> <p>17 make an objection based on the scope of the topics</p> <p>18 before us here today. You can answer to the extent</p> <p>19 that -- and also vagueness. You can answer to</p> <p>20 extent that you can.</p> <p>21 THE WITNESS: Not that I am aware of.</p> <p>22 BY MR. ABBAS:</p>	<p style="text-align: right;">51</p> <p>1 THE WITNESS: If you want me to answer.</p> <p>2 MR. ABBAS: Do you want us to step out?</p> <p>3 MS. KONKOLY: You can step out.</p> <p>4 THE VIDEOGRAPHER: We are going off the</p> <p>5 record. The time is 9:49 a.m.</p> <p>6 (A recess was held.)</p> <p>7 THE VIDEOGRAPHER: We are back on the</p> <p>8 record. The time is 10:04 a.m. And we have been on</p> <p>9 the record for 42 minutes and 3 seconds.</p> <p>10 MR. ABBAS: Could you read the last</p> <p>11 question, please? Oh, I'm sorry. Lena Masri is now</p> <p>12 here for the plaintiffs. Could you read the last</p> <p>13 question back?</p> <p>14 (The record was read.)</p> <p>15 MS. KONKOLY: And I am going to object</p> <p>16 that that calls for a legal conclusion. I am going</p> <p>17 to object on the basis of the scope of the</p> <p>18 protective order that was entered. And I am also</p> <p>19 going to object insofar as the answer to that</p> <p>20 question involves information that is within the</p> <p>21 purview of another agency and note that while</p> <p>22 Mr. Groh can answer this question based on his</p>
<p style="text-align: right;">50</p> <p>1 Q. Is the National Security Council's</p> <p>2 authority to resolve differences between the Terror</p> <p>3 Screening Center and the FBI as to how to TSDB</p> <p>4 should be the maintained and operated memorialized</p> <p>5 in some document?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 Objection. Potentially law enforcement. You can</p> <p>8 answer if you can.</p> <p>9 THE WITNESS: I believe it is generally</p> <p>10 memorialized in the executive order.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. HSPD-6?</p> <p>13 MS. KONKOLY: Objection. Calls for a</p> <p>14 legal conclusion.</p> <p>15 THE WITNESS: I may have to confer. I am</p> <p>16 not sure if that document itself is privileged. I'm</p> <p>17 not sure.</p> <p>18 MR. ABBAS: Do you want to take a second?</p> <p>19 MS. KONKOLY: If the witness needs advice</p> <p>20 as to whether he can answer without waiving the</p> <p>21 privilege, we would ask to take a break.</p> <p>22 MR. ABBAS: It's up to you.</p>	<p style="text-align: right;">52</p> <p>1 understanding he cannot bind any other agency with</p> <p>2 his answer.</p> <p>3 THE WITNESS: So I think the --</p> <p>4 generally, I wasn't sure if there was a privilege</p> <p>5 associated with it. But I don't believe there is.</p> <p>6 NSPM-4, which was published last year, which lays</p> <p>7 out National Security Council procedures generally,</p> <p>8 is the process that would be used to resolve any</p> <p>9 differences between any members of the Watch Listing</p> <p>10 Advisory Council, include the TSC and the FBI.</p> <p>11 MR. ABBAS: Arizona.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. NSPM-4?</p> <p>14 <b>A. National Security Presidential Memorandum</b></p> <p>15 <b>4.</b></p> <p>16 Q. And the National Security Presidential --</p> <p>17 <b>A. Memoranda or memorandum.</b></p> <p>18 Q. The National Security Presidential</p> <p>19 Memorandum was first published in 2017; is that</p> <p>20 correct?</p> <p>21 <b>A. This particular one, yes.</b></p> <p>22 Q. Are there prior versions of the NSPM?</p>

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<p style="text-align: right;">53</p> <p>1 MS. KONKOLY: Objection. Calls for a 2 legal conclusion. Objection. Based on the scope of 3 the protective order, I think this is pretty -- 4 getting a little far afield of the topics we have 5 agreed to and the court has entered. And I am going 6 to object insofar as, again, his answer calls for 7 information within the purview of another agency. 8 Mr. Groh can testify as to his understanding about 9 the answer to this question. But he cannot bind 10 another agency with his answer. 11 MR. ABBAS: And the first topic is the 12 Terror Screening Center's role in the TSDB 13 nominations process. It appears that the Terror 14 Screening Center is part of the Watch Listing 15 Advisory Council. It is the deponent's testimony 16 today that the Watch Listing Advisory Council and 17 the National Security Council play a role in the 18 TSDB nomination process. I am asking for the TSC's 19 role in the TSDB nomination process with regards to 20 this NCPM (sic) document, so -- 21 MS. KONKOLY: Okay. And I would note 22 just, for the record, that the court expressly ruled</p>	<p style="text-align: right;">55</p> <p>1 understanding of the answer to this question, but 2 you cannot bind another agency with his answer. 3 MR. ABBAS: And just speaking objections 4 -- 5 MS. KONKOLY: It is not a speaking 6 objection. 7 MR. ABBAS: That was a speaking 8 objection. That was like a 35-second speaking 9 objection. 10 MS. KONKOLY: I am making clear that his 11 answer does not bind other agencies. 12 MR. ABBAS: And it doesn't. I mean, 13 that's just how this deposition works. 14 MS. KONKOLY: Gadeir, I will state that 15 objection when I see fit. 16 THE WITNESS: So the -- once again, I am 17 sorry. One more time. Read the question. Somehow 18 I am -- 19 (The record was read.) 20 MS. KONKOLY: Same objection. 21 THE WITNESS: So, first of all, it is 22 NSPM, National Security.</p>
<p style="text-align: right;">54</p> <p>1 out sources of legal authority as a valid topic for 2 today's deposition. I will reassert all the same 3 privilege. And Mr. Groh can answer to the extent 4 that he can. 5 THE WITNESS: Yeah. Let's repeat the 6 question. I lost it after all of that. 7 BY MR. ABBAS: 8 Q. And just to be clear, I am only asking 9 whether documents exist, right? 10 <b>A. Right.</b> 11 Q. So there is an NCPM (sic) that was 12 published in 2017, correct? 13 <b>A. Yes.</b> 14 Q. And the NCPM (sic) published in 2017 15 memorializes how a dispute between the Terror 16 Screening Center and the FBI would be resolved? 17 MS. KONKOLY: Okay. I am going to object 18 that that calls for a legal conclusion. And I am 19 going to object based on the scope of the protective 20 order. I am going to again object insofar as this 21 answer calls for information within the purview of 22 another agency. Mr. Groh can answer as to his</p>	<p style="text-align: right;">56</p> <p>1 BY MR. ABBAS: 2 Q. NSPM? 3 <b>A. Security. And NSPM-4, actually, right,</b> 4 <b>generally resolves -- I don't know that, for</b> 5 <b>instance, the Watch Listing Advisory Council is</b> 6 <b>named in there. But it provides for this</b> 7 <b>administration general procedures. But I think it</b> 8 <b>is also important to add that I don't think that</b> 9 <b>materially changed anything that previously existed.</b> 10 Q. So last year's NSPM was called NSPM-4? 11 <b>A. Correct.</b> 12 Q. Is there an NSPM-3? 13 MS. KONKOLY: Objection. Calls for a 14 legal conclusion. Objection potentially beyond the 15 scope. 16 BY MR. ABBAS: 17 Q. Is there a document that's called NSPM-3? 18 <b>A. I honestly don't know.</b> 19 Q. Is there a document called NSPM-2? 20 <b>A. I don't know.</b> 21 Q. Is there a document called NSPM-1? 22 <b>A. I don't know.</b></p>



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<p>57</p> <p>1 MR. ABBAS: Arizona, Indiana.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Who is responsible for promulgating</p> <p>4 NSPM-4?</p> <p>5 MS. KONKOLY: Objection. Calls for a</p> <p>6 legal conclusion. Objection. Beyond the scope of</p> <p>7 the protective order entered by the court.</p> <p>8 Objection insofar as this information calls for</p> <p>9 information within the purview of another agency.</p> <p>10 Mr. Groh cannot bind another agency with his answer.</p> <p>11 But you can answer to the extent that you can.</p> <p>12 MR. ABBAS: Can we just -- I'm sorry.</p> <p>13 Can we just make that -- I mean, that objection is</p> <p>14 applicable to every single question I will ask that</p> <p>15 Mr. Groh's testimony today is not going to bind any</p> <p>16 other agency because it can't. I am not asking him</p> <p>17 to bind any other agency. Can we just stipulate,</p> <p>18 for the record, that every single question I ask</p> <p>19 that you will make the objection that Mr. Groh</p> <p>20 testimony's cannot bind other agencies?</p> <p>21 MS. KONKOLY: There are questions you</p> <p>22 could ask that would go simply to what the TSC does</p>	<p>59</p> <p>1 Q. Why did the Terror Screening Center</p> <p>2 create the Terror Screening Database?</p> <p>3 MS. KONKOLY: Objection. Vague.</p> <p>4 Objection. Calls for information that may be</p> <p>5 subject to the law enforcement privilege or the</p> <p>6 state secrets privilege. You can answer to the</p> <p>7 extent that you can.</p> <p>8 THE WITNESS: To fulfill our mandate, to</p> <p>9 consolidate the various watch-listed or various</p> <p>10 watch lists that existed before 9/11.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Did -- has the Terror Screening Center --</p> <p>13 I am sorry. Has the Terror Screening Database</p> <p>14 always had inclusion standards?</p> <p>15 MS. KONKOLY: Objection. Vague</p> <p>16 objection.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. I am going to withdraw. I'm going to</p> <p>19 withdraw that question. What are the terror</p> <p>20 screening databases inclusion standards?</p> <p>21 MS. KONKOLY: Objection. Vague.</p> <p>22 Objection. Calls for information within the law</p>
<p>58</p> <p>1 that would bind the agency. And I think to make a</p> <p>2 clear record, I think I need to make the objection</p> <p>3 when you are straying outside of those lines.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Who decided what the contents of NSPM-4</p> <p>6 would be?</p> <p>7 <b>A. An NSPM is signed by the president of the</b></p> <p>8 <b>United States.</b></p> <p>9 Q. Does NSPM-4 regard matters that do not</p> <p>10 include the TSDB?</p> <p>11 MS. KONKOLY: Objection. Vague.</p> <p>12 Objection. Calls for a legal conclusion.</p> <p>13 Objection. Beyond the scope of the protective</p> <p>14 order. Objection insofar as this information calls</p> <p>15 and -- this question calls for information within</p> <p>16 the purview of other agencies.</p> <p>17 THE WITNESS: I believe it governs the</p> <p>18 functioning generally of the National Security</p> <p>19 Council, which would certainly include many matters</p> <p>20 that are outside the scope of the TSC or the Watch</p> <p>21 Listing Enterprise.</p> <p>22 BY MR. ABBAS:</p>	<p>60</p> <p>1 enforcement privilege, state secrets privilege, SSI.</p> <p>2 You can answer to the extent that you can.</p> <p>3 THE WITNESS: Generally, the standard for</p> <p>4 inclusion is that we have minimum biographic</p> <p>5 information and that it meets the reasonable</p> <p>6 suspicion standard.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Has the Terror Screening Database always</p> <p>9 had a reasonable suspicion -- I am sorry. Has the</p> <p>10 Terror Screening Database always had the same</p> <p>11 inclusion standard?</p> <p>12 MS. KONKOLY: Objection. Vague.</p> <p>13 Objection. Beyond the scope of the protective</p> <p>14 order. Objection. Calls for information within the</p> <p>15 law enforcement privilege, potentially state</p> <p>16 secrets, potentially SSI. You can answer to the</p> <p>17 extent that you can.</p> <p>18 THE WITNESS: Generally, I believe it has</p> <p>19 always been the reasonable suspicion standard.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. When was the TSDB's inclusion standards</p> <p>22 first established? I am going to rephrase that</p>

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<p style="text-align: right;">61</p> <p>1 question. When did the inclusion standards of the 2 TSDB first come into being?</p> <p>3 MS. KONKOLY: Objection. Vague.</p> <p>4 Objection. Beyond the scope of the protective 5 order. You can answer to the extent that you can.</p> <p>6 THE WITNESS: I don't know precisely when 7 the first time the definition was written down going 8 back to my previous answers about when the Watch 9 Listing Guidance was first promulgated. But I don't 10 believe that there was ever a different standard 11 used. So whenever the TSDB actually started 12 operating, that would have been the time the 13 reasonable suspicion standard began to be used.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. And it has always been the same?</p> <p>16 MS. KONKOLY: Objection.</p> <p>17 Mischaracterizes prior testimony.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. I am sorry. Let me withdraw that 20 question. The TSDB inclusion standard has always 21 been the same, correct?</p> <p>22 MS. KONKOLY: Objection.</p>	<p style="text-align: right;">63</p> <p>1 additional standards for outside of the KST 2 standard. For instance, the criteria for no fly and 3 selectee subcomponents of the TSDB.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Can you be on the selectee list and not 6 on -- I am sorry. Can you be on the selectee list 7 and not on the Terror Screening Database? Let me 8 start again. Can a person be on a selectee list but 9 not in the Terror Screening Database?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Can a person be on the No-Fly List but 12 not on the Terror Screening Database?</p> <p>13 <b>A. No.</b></p> <p>14 Q. So everyone on a selectee list and the 15 No-Fly List is also in the Terror Screening 16 Database, correct?</p> <p>17 <b>A. That is correct.</b></p> <p>18 Q. Can a person be included on the terror -- 19 I am sorry. Has the -- can a person be included in 20 the Terror Screening Database and not satisfy TSDB's 21 inclusion standard?</p> <p>22 MS. KONKOLY: Objection. I am going to</p>
<p style="text-align: right;">62</p> <p>1 Mischaracterizes prior testimony.</p> <p>2 THE WITNESS: To the best of my 3 knowledge, the overall standard has been the same.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. And what do you mean by -- the overall is 6 a little squishy. The TSDB inclusion standard has 7 always been the same, correct?</p> <p>8 <b>A. The reasonable suspicion standard has 9 always been, to my knowledge, the same.</b></p> <p>10 Q. Is there another TSDB inclusion standard?</p> <p>11 MS. KONKOLY: Objection. Vague.</p> <p>12 Objection. Potential --</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. And I am sorry. Let me withdraw that 15 question. Is there another TSDB inclusion standard 16 other than the reasonable suspicion standard that 17 you mentioned?</p> <p>18 MS. KONKOLY: Objection. Vague.</p> <p>19 Objection. Potentially calls for law enforcement or 20 state secrets-privileged information. You can 21 answer to the extent that you can.</p> <p>22 THE WITNESS: So there are certainly</p>	<p style="text-align: right;">64</p> <p>1 object on the ground of vagueness. Also, 2 potentially calls for law enforcement sensitive 3 information and potentially state secrets. You can 4 answer to the extent that you can.</p> <p>5 THE WITNESS: Can you restate the precise 6 question?</p> <p>7 MR. ABBAS: Can you read back the 8 question?</p> <p>9 (The read was read.)</p> <p>10 MS. KONKOLY: Same objection.</p> <p>11 THE WITNESS: What do you mean by the 12 TSDB inclusion standard? Sorry.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. You testified that the TSDB inclusion 15 standard is a reasonable suspicion standard, 16 correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. We will -- I will ask you some more 19 questions about the consent of that reasonable 20 suspicion standard. But right now I just want to 21 know can a person be in the terror screening data -- 22 I am sorry. Can TSC include a person in the Terror</p>

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<p style="text-align: right;">65</p> <p>1 Screening Database that does not satisfy the TSDB 2 inclusion standard?</p> <p>3 MS. KONKOLY: Objection. Vague.</p> <p>4 Objection. Potentially calls for law enforcement or 5 state secrets information. But you can answer to 6 the extent that you can.</p> <p>7 THE WITNESS: There are limited purposes 8 for which individuals who do not meet the reasonable 9 suspicion standard can be included in the Terror 10 Screening Database in order to facilitate screening 11 processes specifically for the Department of 12 Homeland Security and Department of State.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. So the Terror Screening Center does not 15 apply the TSDB inclusion standards to every person 16 that is in the TSDB?</p> <p>17 MS. KONKOLY: Objection. Vague. Calls 18 for -- objection. Vague.</p> <p>19 THE WITNESS: I would clarify that you 20 keep use the word TSDB inclusion standard. That's 21 not a word I have used. I would say that is the 22 reasonable suspicion standard that's applied to</p>	<p style="text-align: right;">67</p> <p>1 have not worked at the TSC, so I don't know your 2 language.</p> <p>3 <b>A. I understand.</b></p> <p>4 Q. Does the TSC -- let me try asking the 5 question a different way. Does the TSC apply the 6 same standard to every person in the Terror 7 Screening Database?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Objection. Calls for information that's potentially 10 -- a full answer may call for information protected 11 by the law enforcement or state secrets privilege. 12 But you can answer to the extent that you can.</p> <p>13 THE WITNESS: I believe, as I just 14 testified, the answer to that is no.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Why doesn't the Terror Screening Center 17 apply the same standards to every person in the 18 Terror Screening Center? I am sorry. Let me start 19 that again. Why doesn't the Terror Screening Center 20 apply the same standard to each person in the Terror 21 Screening Database?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>
<p style="text-align: right;">66</p> <p>1 known or suspected terrorists.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. So we are going to argue -- not argue. I 4 am going to ask you questions about the content of 5 the reasonable suspicion standard. And I am using 6 the inclusion standard, because I don't think it is 7 a reasonable suspicion standard. But is the 8 standard that TSC applies to determine whether 9 someone is included in the TSDB, you refer to that 10 as the reasonable suspicion standard, correct?</p> <p>11 <b>A. That is correct.</b></p> <p>12 Q. Okay. I refer to that as the inclusion 13 standard.</p> <p>14 <b>A. Okay. I am just saying that my concern</b> 15 <b>about that is precision is important here.</b></p> <p>16 Q. Of course.</p> <p>17 <b>A. It is going to be confusing going</b> 18 <b>forward. And we may have to keep clarifying this</b> 19 <b>because this is complex stuff. So we have got to be</b> 20 <b>precise.</b></p> <p>21 Q. And I appreciate you working together 22 with me as we are trying to clarify the language. I</p>	<p style="text-align: right;">68</p> <p>1 Objection. Calls for information potentially 2 protected by the law enforcement or state secrets 3 privilege. You can answer to the extent that you 4 can.</p> <p>5 THE WITNESS: Because we were directed by 6 the Watch Listing Advisory Council in certain 7 instances for certain purposes to apply a different 8 standard.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. When did the Watch Listing Advisory 11 Council tell the Terror Screening Center to 12 establish exceptions to what you are calling the 13 reasonable suspicion standard of the TSDB?</p> <p>14 MS. KONKOLY: Objection. Vague.</p> <p>15 Objection. Potentially calls for law enforcement 16 sensitive information. You can answer to the extent 17 that you can answer. And SSL.</p> <p>18 THE WITNESS: I think I can only give a 19 general answer to that to say that was after 2009.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Okay. Are the exceptions to the TSDB 22 inclusion standards memorialized in the document?</p>

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<p style="text-align: right;">69</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Potentially calls for information within</p> <p>3 the law enforcement or state secrets privileges.</p> <p>4 You can answer to the extent that you can.</p> <p>5 THE WITNESS: I think they would be</p> <p>6 memorialized in various documents.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. What documents memorialized the various</p> <p>9 exceptions to the TSDB's inclusion standard?</p> <p>10 MS. KONKOLY: I am going to object on the</p> <p>11 basis of law enforcement privilege and potentially</p> <p>12 state secrets. I am going to instruct the witness</p> <p>13 not to answer that question.</p> <p>14 MR. ABBAS: I am just asking for the</p> <p>15 titles of the documents. Are you asserting the --</p> <p>16 what privileges are you asserting over the titles of</p> <p>17 the document that memorialized the exceptions to the</p> <p>18 TSDB inclusion standards?</p> <p>19 MS. KONKOLY: Law enforcement,</p> <p>20 potentially state secrets. I am instructing him not</p> <p>21 to answer.</p> <p>22 MR. ABBAS: Over the names of the</p>	<p style="text-align: right;">71</p> <p>1 there is two exceptions or 40 exceptions. You are</p> <p>2 asserting the state secrets privilege and the law</p> <p>3 enforcement privilege over the number of exceptions</p> <p>4 to the TSDB inclusion standards?</p> <p>5 MS. KONKOLY: My objection is on the</p> <p>6 record.</p> <p>7 MR. ABBAS: I am clarifying. Are you</p> <p>8 objecting? Are you asserting the state secrets</p> <p>9 privilege and the law enforcement privilege over the</p> <p>10 number of exceptions to the TSDB inclusion standard?</p> <p>11 MS. KONKOLY: My objection is on the</p> <p>12 record. And yes, I am.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Could the president order the Terror</p> <p>15 Screening Center to place a person in the TSDB who</p> <p>16 did not satisfy the TSDB inclusion standard?</p> <p>17 MS. KONKOLY: Objection. Calls for a</p> <p>18 legal conclusion. Objection. Vague. Objection.</p> <p>19 Calls for speculation. Objection. Potentially law</p> <p>20 enforcement or state secrets. But you can answer if</p> <p>21 you can.</p> <p>22 THE WITNESS: I think, subject to the</p>
<p style="text-align: right;">70</p> <p>1 documents?</p> <p>2 MS. KONKOLY: My objection is on the</p> <p>3 record.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Is the watch listing -- does the Watch</p> <p>6 Listing Guidance articulate the exceptions to the</p> <p>7 TSDB inclusion standards?</p> <p>8 MS. KONKOLY: Objection. I am going to</p> <p>9 object on the basis of law enforcement privilege,</p> <p>10 potentially state secrets. And I am going to</p> <p>11 instruct the witness not to answer that question.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. How many exceptions are there to the TSDB</p> <p>14 inclusion standard?</p> <p>15 MS. KONKOLY: I am going to again object</p> <p>16 on the basis of the law enforcement privilege,</p> <p>17 potentially the state secrets privilege. And I am</p> <p>18 going to, again, instruct the witness not to answer</p> <p>19 that question.</p> <p>20 MR. ABBAS: How many -- you are asserting</p> <p>21 the privilege over how many -- he said that there</p> <p>22 are various exceptions. I want to know whether</p>	<p style="text-align: right;">72</p> <p>1 Constitution and laws of the United States, the</p> <p>2 president ultimately is a part of the Executive</p> <p>3 Branch who can give orders to the TSC, which could</p> <p>4 include what you are describing.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Is the TSDB inclusion standard -- never</p> <p>7 mind. Are there more than five exceptions to the</p> <p>8 TSDB inclusion standards?</p> <p>9 MS. KONKOLY: I am going to object on the</p> <p>10 basis of the law enforcement privilege, potentially</p> <p>11 the state secrets privilege. And I am going to</p> <p>12 instruct the witness not to answer that question.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Are there more than 10 exceptions to the</p> <p>15 TSDB inclusion standards?</p> <p>16 MS. KONKOLY: I am going to again object</p> <p>17 on the basis of the law enforcement privilege,</p> <p>18 potentially state secrets, and instruct the witness</p> <p>19 not to answer.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. The Watch Listing Advisory Council</p> <p>22 created exceptions to the TSDB inclusion standards</p>

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<p style="text-align: right;">73</p> <p>1 in 2009, correct?</p> <p>2 MS. KONKOLY: Objection.</p> <p>3 Mischaracterizes prior testimony. Objection.</p> <p>4 Vague.</p> <p>5 THE WITNESS: I am just testifying that</p> <p>6 it was after 2009 -- during or after 2009.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. So you are not sure as to the year. But</p> <p>9 it was at least after 2009 that the exceptions were</p> <p>10 created?</p> <p>11 <b>A. That's correct.</b></p> <p>12 Q. Prior to 2009, were there any exceptions</p> <p>13 to the TSDB inclusion standard?</p> <p>14 MS. KONKOLY: Objection. Vague.</p> <p>15 Objection. Scope of the protective order. You can</p> <p>16 answer to the extent that you know.</p> <p>17 THE WITNESS: I don't believe so.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Why did the Terror Screening Center</p> <p>20 create exceptions -- I am sorry. Your testimony is</p> <p>21 that the Watch Listing Advisory Council created the</p> <p>22 exceptions to the TSDB inclusion standards, correct?</p>	<p style="text-align: right;">75</p> <p>1 Watch Listing Advisory Council has issued new</p> <p>2 exceptions to the TSDB inclusion standard, you are</p> <p>3 asserting the law enforcement privilege and the</p> <p>4 state secrets privilege over the number of times</p> <p>5 that the TSDB inclusion standards have had</p> <p>6 exceptions made to them?</p> <p>7 MS. KONKOLY: My objection is on the</p> <p>8 record and yes.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Has the -- I am sorry. Has the Watch</p> <p>11 Listing Advisory Council issued -- I am sorry. Has</p> <p>12 the Watch Listing Advisory Council created</p> <p>13 exceptions to the TSDB inclusion standards on</p> <p>14 multiple occasions?</p> <p>15 MS. KONKOLY: Objection. Calls for</p> <p>16 information within the law enforcement privilege,</p> <p>17 potentially the state secrets privilege. And I am</p> <p>18 going to instruct him not to answer that question.</p> <p>19 MR. ABBAS: Whether or not the Watch</p> <p>20 Listing Advisory Council has done so on multiple</p> <p>21 occasions? That's potentially a state secret if</p> <p>22 they have done it twice or three or more than once?</p>
<p style="text-align: right;">74</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 THE WITNESS: I mean, just given the word</p> <p>3 created, but effectively agree that there would be</p> <p>4 exceptions.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. What was the rationale of the Watch</p> <p>7 Listing -- I'm sorry. What was the rationale of the</p> <p>8 Watch Listing Advisory Council when it created</p> <p>9 exceptions to the TSDB inclusion standard?</p> <p>10 MS. KONKOLY: Objection. That calls for</p> <p>11 information protected by the law enforcement</p> <p>12 privilege, potentially state secrets privilege. I</p> <p>13 am instructing the witness not to answer.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. On how many occasions has the Watch</p> <p>16 Listing Advisory Council created exceptions to the</p> <p>17 TSDB inclusion standard?</p> <p>18 MS. KONKOLY: Objection. Calls for</p> <p>19 information protected by the law enforcement</p> <p>20 privilege, potentially the state secrets privilege.</p> <p>21 I am instructing the witness not to answer.</p> <p>22 MR. ABBAS: The number of times that the</p>	<p style="text-align: right;">76</p> <p>1 You have told me that they have done it once. Why</p> <p>2 can't Mr. Groh tell me if it has happened more than</p> <p>3 once? What's the --</p> <p>4 MS. KONKOLY: My objection is on the</p> <p>5 record. The instruction stands. You are welcome to</p> <p>6 ask your next question.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Are there persons listed in the Terror</p> <p>9 Screening Database for whom the TSC lacks reasonable</p> <p>10 suspicion that they are a known or suspected</p> <p>11 terrorist?</p> <p>12 MS. KONKOLY: Objection. Potentially</p> <p>13 calls for law enforcement, potentially state</p> <p>14 secrets. You can answer that if you can.</p> <p>15 THE WITNESS: I would say that, yes, with</p> <p>16 a caveat that those individuals are in there for</p> <p>17 limited purposes. And so being in the database is</p> <p>18 not the same as being available to all potential</p> <p>19 screeners.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. What are the limited purposes that TSC --</p> <p>22 I am sorry. Let me start all over. What are the</p>

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<p style="text-align: right;">77</p> <p>1 limited purposes for which the TSC will allow an  2 individual to be included in the TSDB who does not  3 satisfy the TSDB inclusion standard?  4 MS. KONKOLY: Objection. Asked and  5 answered. Objection. Calls for information  6 protected by the law enforcement privilege,  7 potentially the state secrets privilege. You can  8 answer that if you can.  9 THE WITNESS: So as I previously stated,  10 it is for screening conducted by the Department of  11 Homeland Security and by the Department of State.  12 BY MR. ABBAS:  13 Q. What screening does the Department of  14 Homeland Security and the Department of State do via  15 these TSDB inclusion standard exceptions?  16 MS. KONKOLY: Objection. An answer to  17 that would call for information protected by the law  18 enforcement privilege and potentially the state  19 secrets privilege. I am instructing the witness not  20 to answer.  21 BY MR. ABBAS:  22 Q. So you can tell me which agency, but you</p>	<p style="text-align: right;">79</p> <p>1 aware of certain documents. I assume there are  2 other documents.  3 MR. ABBAS: Arizona.  4 BY MR. ABBAS:  5 Q. What documents memorialized what  6 screening DHS does via these TSDB inclusion standard  7 exceptions?  8 MS. KONKOLY: Objection. Calls for  9 information protected by the law enforcement  10 privilege, potentially state secrets privilege. On  11 that basis, I am going to instruct the witness not  12 to answer. However, I will also add the objection  13 that the answer would call for information within  14 the purview of other agencies in any event.  15 MR. ABBAS: Can you read back the  16 question. I forgot it already. I apologize.  17 (The record was read.)  18 MS. KONKOLY: I am asserting the same  19 privilege and issuing the same instruction not to  20 answer that question.  21 MR. ABBAS: You are asserting the law  22 enforcement privilege and state secrets privilege</p>
<p style="text-align: right;">78</p> <p>1 can't tell me what the agency does with the  2 information. And just tell me what TSC's knowledge  3 is of what those two agencies do with the exceptions  4 to the TSB inclusion standard?  5 MS. KONKOLY: I will add the objection  6 that that answer would call for information within  7 the purview of other agencies. And Dr. Groh could  8 not bind -- Mr. Groh could not bind them. But I am  9 instructing the witness not to answer on the basis  10 of privileges I have asserted here, which are on the  11 record.  12 BY MR. ABBAS:  13 Q. Is there a document that memorializes how  14 DHS utilizes this TSDB inclusion standard exception  15 for their screening purposes?  16 MS. KONKOLY: I am going to object to  17 scope potentially but also the fact that that answer  18 would call for information within the purview of  19 another agency. And so, therefore, Mr. Groh can't  20 bind TSA. You can answer, however, as to your  21 understanding.  22 THE WITNESS: Yes. There are -- I am</p>	<p style="text-align: right;">80</p> <p>1 over the name of the documents that memorialized the  2 agreement. I am sorry. Memorialized how DHS  3 utilizes the TSDB inclusion standard exceptions.  4 MS. KONKOLY: Yes, Gadeir. My objection  5 is on the record.  6 BY MR. ABBAS:  7 Q. How many documents memorialized how  8 DHS -- I'm sorry. How many documents memorialized  9 how DHS utilizes the TSDB inclusion standard  10 exceptions for their screening?  11 MS. KONKOLY: Objection on the basis of  12 the law enforcement privilege. Potentially state  13 secrets. Also, it would call for information within  14 the purview of another agency. I am instructing the  15 witness not to answer.  16 MR. ABBAS: Over the number of documents?  17 MS. KONKOLY: Gadeir, my objection is on  18 the record.  19 MR. ABBAS: I am just clarifying. I am  20 just making sure of that.  21 MS. KONKOLY: I understood the question,  22 and my objection is on the record.</p>

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<p style="text-align: right;">81</p> <p>1 MR. ABBAS: So you have asserted the law</p> <p>2 enforcement privilege and the state secrets</p> <p>3 privilege over the names of the documents and the</p> <p>4 number of documents that memorialize the ways that</p> <p>5 DHS utilizes the TSDB inclusion standard exceptions</p> <p>6 for their screening.</p> <p>7 MS. KONKOLY: Yes, Gadeir. I understood</p> <p>8 your question. And I stated my objection and</p> <p>9 instruction for the record.</p> <p>10 MR. ABBAS: Thank you.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. What are the purposes of the Terror</p> <p>13 Screening Database?</p> <p>14 MS. KONKOLY: Objection. Vague.</p> <p>15 Objection. Potentially calls for information within</p> <p>16 the law enforcement or the state secrets,</p> <p>17 potentially SSI. But you can answer that to the</p> <p>18 extent that you can.</p> <p>19 THE WITNESS: The TSDB's purpose is to</p> <p>20 consolidate what once were disparate watch-listed --</p> <p>21 disparate watch lists to provide a common operating</p> <p>22 picture for the intelligence community screeners and</p>	<p style="text-align: right;">83</p> <p>1 Q. Does -- is it TSC's understanding that</p> <p>2 the FBI utilizes the TSDB for investigative</p> <p>3 purposes?</p> <p>4 MS. KONKOLY: Objection insofar as it</p> <p>5 calls for an answer that goes to information owned</p> <p>6 by another agency. But you can answer as to your</p> <p>7 understanding.</p> <p>8 THE WITNESS: Yes, we support FBI</p> <p>9 investigations.</p> <p>10 Q. Does the TSDB support FBI investigations</p> <p>11 by helping the FBI recruit informants?</p> <p>12 MS. KONKOLY: Objection. Misleading.</p> <p>13 Objection. Potentially law enforcement, potentially</p> <p>14 state secrets. You can answer to the extent that</p> <p>15 you can.</p> <p>16 THE WITNESS: We support investigations.</p> <p>17 From time to time investigations lead to the</p> <p>18 recruitment of informants. But I wouldn't say there</p> <p>19 is any direct relationship between recruit</p> <p>20 informants and the TSDB.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Does TSC have any knowledge that the FBI</p>
<p style="text-align: right;">82</p> <p>1 the law enforcement community in order to better</p> <p>2 prevent terrorism.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Is the purpose of the Terror Screening</p> <p>5 Database to prevent terrorism?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 Objection. Potentially calls for law enforcement</p> <p>8 sensitive information. You can answer if you can.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. I am sorry. I am going to withdraw that</p> <p>11 question. I forgot to ask a few questions regarding</p> <p>12 the inclusion standards. So I apologize for jumping</p> <p>13 around. I just missed something. Does the TSC</p> <p>14 allow the FBI to utilize the TSDB to coerce</p> <p>15 individuals into becoming informants?</p> <p>16 MS. KONKOLY: Objection. Misleading.</p> <p>17 Objection. Vague. Objection. Calls for law</p> <p>18 enforcement and potentially state secrets privileged</p> <p>19 information. You can answer to the extent that you</p> <p>20 can.</p> <p>21 THE WITNESS: No.</p> <p>22 MR. ABBAS:</p>	<p style="text-align: right;">84</p> <p>1 utilizes the TSDB to recruit informants?</p> <p>2 MS. KONKOLY: Objection. Potentially law</p> <p>3 enforcement or state secrets. Objection. Vague.</p> <p>4 Objection. Potentially calls for information within</p> <p>5 the purview of another agency. You can answer to</p> <p>6 the extent that you can.</p> <p>7 THE WITNESS: As I previously stated, we</p> <p>8 support investigations generally. The FBI does</p> <p>9 recruit informants, but I don't think it is fair to</p> <p>10 draw kind of a direct relationship between the</p> <p>11 presence of TSDB and being used to coerce people to</p> <p>12 becoming informants.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is the recruitment of informants an</p> <p>15 appropriate use of the TSDB in the view of Terror</p> <p>16 Screening Center?</p> <p>17 MS. KONKOLY: Objection. Vague.</p> <p>18 Objection. Potentially law enforcement privileged.</p> <p>19 Potentially goes to information in the purview of</p> <p>20 another agency. You can answer to the extent that</p> <p>21 you can.</p> <p>22 THE WITNESS: My opinion -- inasmuch as</p>

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<p style="text-align: right;">85</p> <p>1 there is an investigation of an individual, I think</p> <p>2 that is appropriate. But to fully answer your</p> <p>3 question, that would assume a predicated</p> <p>4 investigation pursuant to -- if we are talking about</p> <p>5 the FBI, pursuant to the guidelines that the FBI</p> <p>6 follows. But is not, per se, simply to recruit</p> <p>7 someone who is not subject to a predicated</p> <p>8 investigation.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Are there individuals on the Terror</p> <p>11 Screening Database that are informants for the FBI?</p> <p>12 MS. KONKOLY: Objection. Calls for</p> <p>13 information protected by the law enforcement</p> <p>14 privilege, potentially the state secrets. I am</p> <p>15 going to instruct not to answer that one.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Does the TSDB contain notations if</p> <p>18 someone is an informant of the FBI?</p> <p>19 MS. KONKOLY: Objection. Calls for law</p> <p>20 enforcement sensitive and potentially state secrets.</p> <p>21 I am instructing him not to answer that question.</p> <p>22 BY MR. ABBAS:</p>	<p style="text-align: right;">87</p> <p>1 the FBI.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. The Terror Screening Center knows that</p> <p>4 the FBI utilizes the TSDB to monitor the movement of</p> <p>5 persons listed in the FBI, correct?</p> <p>6 MS. KONKOLY: Objection.</p> <p>7 Mischaracterizes prior testimony. Objection.</p> <p>8 Potentially law enforcement information within the</p> <p>9 purview of another agency. You can answer to the</p> <p>10 extent that you can.</p> <p>11 THE WITNESS: I think the word monitor is</p> <p>12 -- I wouldn't use that particular word. We report</p> <p>13 encounters when we become aware of them.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Why do you report -- why does TSC report</p> <p>16 encounters with TSDB listees to the FBI?</p> <p>17 MS. KONKOLY: Objection. Potentially</p> <p>18 calls for law enforcement sensitive information.</p> <p>19 You can answer to the extent that you can.</p> <p>20 THE WITNESS: To maintain that common</p> <p>21 operating picture, I formally referred to, as it was</p> <p>22 one of the key lessons to be found in the 9/11</p>
<p style="text-align: right;">86</p> <p>1 Q. Is -- does the FBI utilize -- I am sorry.</p> <p>2 In TSC's understanding, does the FBI utilize the</p> <p>3 TSDB to track persons in the FBI?</p> <p>4 MS. KONKOLY: Objection. Calls for</p> <p>5 information potentially within law enforcement,</p> <p>6 state secrets privileges. Also within the purview</p> <p>7 of another agency. You can answer to the extent</p> <p>8 that you can.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Let me withdraw that question. I just</p> <p>11 asked it poorly. Does the TSC know whether the FBI</p> <p>12 utilizes the TSDB to track the movement of persons</p> <p>13 listed in the FBI?</p> <p>14 MS. KONKOLY: Same objections.</p> <p>15 Potentially law enforcement sensitive, potentially</p> <p>16 state secrets. Vague and within the purview of</p> <p>17 another agency. But you can answer as to your</p> <p>18 understanding.</p> <p>19 THE WITNESS: I think generally, the FBI</p> <p>20 may use -- we would -- someone that the FBI has</p> <p>21 interest or equities with respect to, we would</p> <p>22 report what we would call encounters generally to</p>	<p style="text-align: right;">88</p> <p>1 Commission Report.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Who told the Terror Screening Center to</p> <p>4 report encounters with TSDB listees to the FBI?</p> <p>5 MS. KONKOLY: Objection. Vague.</p> <p>6 Objection. Potentially law enforcement sensitive.</p> <p>7 You can answer to the extent that you can.</p> <p>8 THE WITNESS: I am going to assume that</p> <p>9 that happened very early on in the creation of that.</p> <p>10 You know, that would be something governed by the</p> <p>11 Watch Listing Advisory Council. It has long and/or</p> <p>12 always been the case that that's been true.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. What is TSC's understanding of what the</p> <p>15 FBI generally does with TSDB listee encounter</p> <p>16 information that it receives from the Terror</p> <p>17 Screening Center?</p> <p>18 MS. KONKOLY: Objection. Potentially</p> <p>19 calls for law enforcement sensitive information.</p> <p>20 Also, information within the purview of another</p> <p>21 agency to which Mr. Groh cannot bind any other</p> <p>22 agency. But you can answer as to your understanding</p>



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<p style="text-align: right;">89</p> <p>1 without waiving any privileges.</p> <p>2 THE WITNESS: We report that information</p> <p>3 to the -- to the investigator for whatever matter</p> <p>4 that may relate to. And I believe that that is then</p> <p>5 recorded in the investigative case file.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Does the dissemination of DHS listee</p> <p>8 encounter information to the FBI happen</p> <p>9 automatically?</p> <p>10 MS. KONKOLY: Objection. Vague.</p> <p>11 Objection. Potentially law enforcement --</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Can I back up that question? You used</p> <p>14 the word encounter?</p> <p>15 A. Yes.</p> <p>16 Q. What is TSC's definition of an encounter?</p> <p>17 A. <b>So an encounter is -- we use the term</b></p> <p>18 <b>encounter to describe any time one of our screening</b></p> <p>19 <b>partners comes into contact physically or</b></p> <p>20 <b>administratively with somebody that is watch-listed</b></p> <p>21 <b>in the TSDB.</b></p> <p>22 Q. Does the TSC try to maximum the number of</p>	<p style="text-align: right;">91</p> <p>1 MS. KONKOLY: Objection. Vague, calls</p> <p>2 for speculation, potentially law enforcement</p> <p>3 sensitive. You can answer to the extent that you</p> <p>4 can.</p> <p>5 THE WITNESS: So, again, our processes</p> <p>6 were envisioned as a result of 9/11. And so as an</p> <p>7 example, I will give you that there were individuals</p> <p>8 known to the United States intelligence community</p> <p>9 who were being sought in relation to various</p> <p>10 investigations prior to 9/11 who were present in the</p> <p>11 United States. They were subsequently encountered</p> <p>12 by local law enforcement. But that information did</p> <p>13 not get back to either the intelligence community or</p> <p>14 the FBI. And, thus, opportunities to have</p> <p>15 intervened and prevented the events of 9/11 were</p> <p>16 missed.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Does the Terror Screening Center believe</p> <p>19 that increasing the number of tracked encounters</p> <p>20 with TSDB listees furthers the purposes of the</p> <p>21 Terror Screening Database?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>
<p style="text-align: right;">90</p> <p>1 encounters of TSDB listees?</p> <p>2 MS. KONKOLY: Objection. Misleading.</p> <p>3 Objection, vague.</p> <p>4 THE WITNESS: When you say -- I don't</p> <p>5 understand what you mean by maximize the number.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. What's the utility of -- well, give me an</p> <p>8 example of a TSDB listee encounter?</p> <p>9 MS. KONKOLY: Objection. Potentially</p> <p>10 calls for law enforcement sensitive or state secrets</p> <p>11 privilege information. You can answer that if you</p> <p>12 can without waiving the privilege.</p> <p>13 THE WITNESS: It could be a -- it could</p> <p>14 be a traffic stop by a local law enforcement</p> <p>15 officer. It could be something with respect to</p> <p>16 border screening. It could be something with</p> <p>17 respect to a domestic fight.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Why is that -- why is whether a TSDB</p> <p>20 listee -- let me start all over. Why is a local</p> <p>21 police officer's traffic-related encounter with a</p> <p>22 TSDB listee useful information?</p>	<p style="text-align: right;">92</p> <p>1 Objection. Misleading. Objection law enforcement</p> <p>2 sensitive. You can answer to the extent that you</p> <p>3 can.</p> <p>4 MR. ABBAS: I mean, if you disagree -- I</p> <p>5 mean, if he says that he doesn't agree with that, he</p> <p>6 should not agree with that. I don't understand --</p> <p>7 MS. KONKOLY: My objections are stated</p> <p>8 for the record. They stand. You can answer to the</p> <p>9 extent that you can.</p> <p>10 THE WITNESS: I think if -- for people</p> <p>11 that are appropriately watch-listed in the record,</p> <p>12 that additional -- additional encounters through</p> <p>13 additional appropriate screening mechanisms are</p> <p>14 generally helpful.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Why?</p> <p>17 MS. KONKOLY: Objection. Calls for</p> <p>18 speculation, potentially law enforcement sensitive</p> <p>19 information. You can answer to the extent that you</p> <p>20 can.</p> <p>21 THE WITNESS: Because each encounter is</p> <p>22 an opportunity to gather and match intelligence in</p>

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<p style="text-align: right;">93</p> <p>1 order to enable identification and disruption of</p> <p>2 terrorist activities.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Does the TSDB have purposes unrelated to</p> <p>5 the security of commercial aviation?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 Objection. Potentially law enforcement sensitive</p> <p>8 information. But you can answer to the extent that</p> <p>9 you can.</p> <p>10 THE WITNESS: I think that the TSDB is</p> <p>11 generally there to prevent terrorist attacks in</p> <p>12 general, not limited to aviation security.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is every encounter with a TSDB listee</p> <p>15 added to the TSDB itself?</p> <p>16 A. The --</p> <p>17 MS. KONKOLY: I am going to object on the</p> <p>18 basis of potential law enforcement. But you can</p> <p>19 answer to the extent that you can.</p> <p>20 THE WITNESS: We maintain encounter</p> <p>21 information in a separate database.</p> <p>22 BY MR. ABBAS:</p>	<p style="text-align: right;">95</p> <p>1 MS. KONKOLY: Objection. Potential law</p> <p>2 enforcement and vague. But you can answer to the</p> <p>3 extent that you can.</p> <p>4 THE WITNESS: Generally, yes.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does the TSC leadership analyze the</p> <p>7 number of encounter with TSDB listees?</p> <p>8 MS. KONKOLY: Objection. Potentially law</p> <p>9 enforcement. You can answer to the extent that you</p> <p>10 can.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Does TSC view -- let me start again.</p> <p>14 Does TSC attempt to disseminate the TSDB in a way</p> <p>15 that increases the number of potential encounters</p> <p>16 with TSDB listees?</p> <p>17 MS. KONKOLY: Objection. Vague.</p> <p>18 Objection. Potential law enforcements. But you can</p> <p>19 answer to the extent that you can.</p> <p>20 THE WITNESS: Not as a first order of</p> <p>21 analysis. But we look at the screening purposes.</p> <p>22 And the appropriate screening purposes are the</p>
<p style="text-align: right;">94</p> <p>1 Q. So you have -- so the Terror Screening</p> <p>2 Center has encounter information with all TSDB</p> <p>3 listees, correct?</p> <p>4 MS. KONKOLY: Objection. Potentially law</p> <p>5 enforcement. You can answer to the extent that you</p> <p>6 can.</p> <p>7 THE WITNESS: We -- we have information</p> <p>8 on all encounters. We certainly don't have</p> <p>9 encounters with every person in the TSDB.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Sure. Does TSC monitor how TSDB listees</p> <p>12 are encountered?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Potentially law enforcement privilege,</p> <p>15 but you can answer.</p> <p>16 THE WITNESS: Do you mean the method in</p> <p>17 which or who the encounter came from?</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Just as an executive. As an executive of</p> <p>20 a big organization, does the executive leadership of</p> <p>21 the Terror Screening Center pay attention to</p> <p>22 encounter patterns with TSDB listees?</p>	<p style="text-align: right;">96</p> <p>1 beginning of the analysis. But I would certainly</p> <p>2 want to generally, although there are requirements</p> <p>3 being met, want to ensure that the way we</p> <p>4 disseminate our information is helpful to the</p> <p>5 screening partner, because if we encounter the</p> <p>6 actual information, we certainly want to -- we</p> <p>7 certainly want to make sure that we detect that</p> <p>8 encounter.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. So the TSC -- so the Terror Screening</p> <p>11 Center views encounters with TSDB listees as a</p> <p>12 source of valuable intelligence information?</p> <p>13 MS. KONKOLY: Objection.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Let me start all over. That was</p> <p>16 terrible. All right. So the Terror Screening</p> <p>17 Center believes that encounters with TSDB listees</p> <p>18 have counter-intelligence value?</p> <p>19 MS. KONKOLY: I will object as vague and</p> <p>20 mischaracterizes information potentially law --</p> <p>21 prior testimony -- mischaracterized prior testimony.</p> <p>22 Potentially implicates the law enforcement</p>

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<p style="text-align: right;">97</p> <p>1 privilege. You can answer that to the extent that</p> <p>2 you can.</p> <p>3 THE WITNESS: I certainly -- well, I</p> <p>4 would certainly not use the word</p> <p>5 counter-intelligence, which as we give -- maybe this</p> <p>6 is us using terms differently, I suspect. I would</p> <p>7 say counter-terrorism value, yes. Generally, I</p> <p>8 agree that positive --</p> <p>9 Q. But can I just --</p> <p>10 <b>A. Encounters --</b></p> <p>11 MS. KONKOLY: Let him finish.</p> <p>12 TE WITNESS: -- with people in the TSDB</p> <p>13 has intelligence or law enforcement value.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Yeah, I see your clarification. I think</p> <p>16 you are right. Thank you for translating for me.</p> <p>17 So let me just kind of for clarity sake rephrase</p> <p>18 with counter-terrorism rather than</p> <p>19 counter-intelligence.</p> <p>20 The TSC's testimony today is that it</p> <p>21 views encounters with TSDB listees as having</p> <p>22 counter-terrorism value?</p>	<p style="text-align: right;">99</p> <p>1 question, we can't go agency by agency because that</p> <p>2 would provide a comprehensive answer to that</p> <p>3 question -- to the previous question. But you can</p> <p>4 answer this one to the extent that you believe you</p> <p>5 can.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does the -- does CBP -- I am sorry.</p> <p>9 Does -- does TSC receive information from CBP when</p> <p>10 CBP encounters a TSDB listee?</p> <p>11 MS. KONKOLY: I am going to make largely</p> <p>12 the same objections. Law enforcement, potential</p> <p>13 state secrets. And for the reason I instructed the</p> <p>14 witness not to answer the question posed in whole,</p> <p>15 we can't proceed to go too far down the</p> <p>16 agency-by-agency path, because that would provide an</p> <p>17 answer to the question I instructed the witness not</p> <p>18 to answer. With that said, you can answer this one</p> <p>19 to the extent that you believe you can.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Does USCI -- I'm sorry. Does TSC receive</p>
<p style="text-align: right;">98</p> <p>1 MS. KONKOLY: Objection. Vague,</p> <p>2 potential law enforcement. You can answer.</p> <p>3 THE WITNESS: Yes. That's what I just</p> <p>4 said.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. What are all the Federal Government</p> <p>7 entities that can have encounters with TSDB listees?</p> <p>8 MS. KONKOLY: Objection. A comprehensive</p> <p>9 answer to that would call for information protected</p> <p>10 by the law enforcement privilege and potentially the</p> <p>11 state secrets privilege. I am going to instruct the</p> <p>12 witness not to answer that question.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Does TSC receive encounter reports from</p> <p>15 the TSA? I am sorry. Let me back up. Does the</p> <p>16 Terror Screening Center receive information from TSA</p> <p>17 when TSA encounters a TSDB listee?</p> <p>18 MS. KONKOLY: Objection. SSI. Objection</p> <p>19 law enforcement. Objection. Calls for information</p> <p>20 potentially within the purview of a different</p> <p>21 agency. Also, I am going to note that for reasons I</p> <p>22 instruct the witness not to answer the previous</p>	<p style="text-align: right;">100</p> <p>1 information from USCIS when USCIS encounters a TSDB</p> <p>2 listee?</p> <p>3 MS. KONKOLY: I am going to again object</p> <p>4 on the basis of the law enforcement privilege and,</p> <p>5 again, note for the reasons I instructed the witness</p> <p>6 not to answer the previous question asking for all</p> <p>7 agencies. I really can't go much further down this</p> <p>8 line. So I need to cut off this line of questioning</p> <p>9 for the same reason. With that said, you can answer</p> <p>10 this question to the extent that you can.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Does TSC receive information from the</p> <p>14 Department of State when the Department of State</p> <p>15 encounters a TSDB listee?</p> <p>16 MS. KONKOLY: Objection. Calls for</p> <p>17 information potentially protected by the law</p> <p>18 enforcement privilege. For the same reasons as I</p> <p>19 stated before, we cannot provide to answer this</p> <p>20 question for every single agency you might want to</p> <p>21 ask it for, because that would provide an answer to</p> <p>22 the question that I have instructed the witness not</p>

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<p style="text-align: right;">101</p> <p>1 to answer. So you can answer this one to the extent</p> <p>2 that you believe that you can.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Does DH -- I am sorry. Does TSC receive</p> <p>6 information from DHS when DHS encounters a TSDB</p> <p>7 listee?</p> <p>8 MS. KONKOLY: I am going to object to</p> <p>9 that question as vague. I am also going to object</p> <p>10 on law enforcement privilege. I am going to object</p> <p>11 for the same reason that this constellation of</p> <p>12 questions will ultimately provide an answer to the</p> <p>13 question I have instructed the witness not to</p> <p>14 answer. With that said, you can answer this one to</p> <p>15 the extent that you can.</p> <p>16 THE WITNESS: I think inasmuch CBP and</p> <p>17 TSA are both part of DHS, I have answered the</p> <p>18 question. Yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Does TSC receive information from the FBI</p> <p>21 when the FBI encounters a TSDB listee?</p> <p>22 MS. KONKOLY: Objection. Calls for law</p>	<p style="text-align: right;">103</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. What do you mean by outside of the</p> <p>3 agencies we have already discussed? What do you</p> <p>4 mean?</p> <p>5 MS. KONKOLY: Objection. Potentially law</p> <p>6 enforcement. You can answer to the extent that you</p> <p>7 can elaborate without waiving a privilege.</p> <p>8 THE WITNESS: I go back to my previous</p> <p>9 answer about exceptions. It is for limited</p> <p>10 screening uses by the Department of Homeland</p> <p>11 Security and the Department of State, both of whom</p> <p>12 we had just discussed. You had asked me if we</p> <p>13 received encounters. There are no other agencies</p> <p>14 for which we receive encounters to people that are</p> <p>15 an exception to the reasonable suspicion standard.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. So the way that DHS and Department of</p> <p>18 State report encounter information to TSC is</p> <p>19 different than the way that the TSA and FBI and</p> <p>20 USCIS report encounter information to TSC?</p> <p>21 MS. KONKOLY: Objection. Vague,</p> <p>22 potential law enforcement. You can answer.</p>
<p style="text-align: right;">102</p> <p>1 enforcement sensitive information, particularly if</p> <p>2 this constellation of questions were taken together</p> <p>3 and proceeds further down the line. That said, you</p> <p>4 can answer this question to the extent that you</p> <p>5 believe you can.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does TSC receive encounter information</p> <p>9 from other Federal Government agencies about</p> <p>10 encounters with TSDB listees irrespective of whether</p> <p>11 or not the TSDB inclusion standard has been applied</p> <p>12 to that individual?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Calls for speculation. Objection.</p> <p>15 Calls for potentially law enforcement or state</p> <p>16 secrets privilege. You can answer that to the</p> <p>17 extent that you can.</p> <p>18 THE WITNESS: Outside of the agencies we</p> <p>19 have already discussed, no.</p> <p>20 MR. ABBAS: I am sorry? Can you read</p> <p>21 back the question and his answer?</p> <p>22 (The record was read.)</p>	<p style="text-align: right;">104</p> <p>1 THE WITNESS: I wouldn't say the way they</p> <p>2 report information is different. What I would say</p> <p>3 is the way that we export the TSDB is different.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Oh, so -- so there are some parts of the</p> <p>6 TSDB that exist via these TSDB inclusion standard</p> <p>7 exceptions, correct?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Objection. Potential law enforcement. But you can</p> <p>10 answer.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. But the information that TSC has that's</p> <p>14 created via these TSDB inclusion standard exceptions</p> <p>15 is only disseminated to DHS and DOS?</p> <p>16 MS. KONKOLY: Objection. Potential law</p> <p>17 enforcement. You can answer if you can.</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Does the Terror Screening Center receive</p> <p>21 encounter information from state and local</p> <p>22 authorities?</p>

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<p>105</p> <p>1 MS. KONKOLY: Objection. Potentially law</p> <p>2 enforcement privilege, but you can answer to the</p> <p>3 extent that you can.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does the Terror Screening Center receive</p> <p>7 encounter information from non-government entities?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Potentially law enforcement. You can answer to the</p> <p>10 extent that you can.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Does the Terror Screening Center receive</p> <p>14 encounter information from foreign governments?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection. Calls for law enforcement sensitive</p> <p>17 information and potentially the state secrets. But</p> <p>18 you can answer to the extent that you can.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. How many countries provide the Terror</p> <p>22 Screening Center with encounter information?</p>	<p>107</p> <p>1 we got away a little bit from the TSDB purposes. So</p> <p>2 I am going to go back to that. I might cover some</p> <p>3 ground that we already covered. But that's just</p> <p>4 because I can't remember exactly where we are.</p> <p>5 <b>A. I am yours for another six or -- five or</b></p> <p>6 <b>six hours.</b></p> <p>7 Q. I will take every minute. And you can</p> <p>8 take a break whenever you would like?</p> <p>9 <b>A. I am good.</b></p> <p>10 Q. But one more encounter-related question.</p> <p>11 Can -- can the FBI -- does the FBI have access to</p> <p>12 encounter information that regards TSDB listees. I</p> <p>13 am sorry. Let me start all over. Do -- does the</p> <p>14 Terror Screening Center provide encounter</p> <p>15 information to agencies that did not originate the</p> <p>16 encounter information?</p> <p>17 MS. KONKOLY: Objection. Vague.</p> <p>18 Objection. Potentially law enforcement. You can</p> <p>19 answer if you can without waiving a privilege.</p> <p>20 THE WITNESS: One of the -- one of the</p> <p>21 basic premises of our dissemination of encounter</p> <p>22 information is to generally inform what we call the</p>
<p>106</p> <p>1 MS. KONKOLY: Huh?</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. I'm sorry. Let me rephrase the question.</p> <p>4 How many foreign governments provide the Terror</p> <p>5 Screening Center with encounter information</p> <p>6 regarding TSDB listees?</p> <p>7 MS. KONKOLY: Objection. That question</p> <p>8 calls for information protected by the law</p> <p>9 enforcement privilege, potentially the state</p> <p>10 secrets. You can answer to the extent that you can</p> <p>11 without waiving a privilege.</p> <p>12 THE WITNESS: We have agreements with</p> <p>13 more than 60 foreign countries. They -- and I think</p> <p>14 that's all I can say.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Some of those agreement are public,</p> <p>17 correct?</p> <p>18 <b>A. Yes, some of the agreements are either --</b></p> <p>19 <b>have been disclosed by the foreign government</b></p> <p>20 <b>themselves. That's true.</b></p> <p>21 Q. Why does the Terror Screening Center</p> <p>22 disseminate -- not yet, not yet. Okay. So I know</p>	<p>108</p> <p>1 nominator -- the originator of that information. It</p> <p>2 is not necessarily the only consideration.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Does the CBP -- does CBP receive</p> <p>5 encounter information? I am sorry. Does TSC</p> <p>6 provide CBP with encounter information that TSA</p> <p>7 provided to TSC?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 MR. ABBAS: That was well worded.</p> <p>10 MS. KONKOLY: Objection. Potentially</p> <p>11 calls for information protected by the law</p> <p>12 enforcement privilege, SSI -- potentially SSI, also</p> <p>13 for information within the purview of another agency</p> <p>14 as to which Mr. Groh cannot speak in a binding</p> <p>15 capacity. But you can answer to the extent that you</p> <p>16 can.</p> <p>17 THE WITNESS: Let me make sure I -- make</p> <p>18 sure I understand this one. So you are saying if</p> <p>19 TSA has an encounter, would I inform CBP that TSA</p> <p>20 has had an encounter?</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Yes.</p>

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<p style="text-align: right;">109</p> <p>1 MS. KONKOLY: Same objections.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Would TSA inform CBP that TSA has had an</p> <p>4 encounter with a TSDB listee?</p> <p>5 MS. KONKOLY: Same objections.</p> <p>6 THE WITNESS: Possibly, not necessarily</p> <p>7 automatically.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. So would CBP have to request that</p> <p>10 information?</p> <p>11 MS. KONKOLY: Objection. Calls for</p> <p>12 information protected by the law enforcement</p> <p>13 privilege, SSI, outside of purview of the TSC. But</p> <p>14 you can answer to the extent that you believe you</p> <p>15 can.</p> <p>16 THE WITNESS: Each circumstance -- we</p> <p>17 look at every encounter in detail, every what we</p> <p>18 call positive encounter, which is where we believe</p> <p>19 it is actually the individual that is listed in the</p> <p>20 TSDB. Once we have made that determination, we look</p> <p>21 at the facts and circumstances of the individual</p> <p>22 encounter. And then we will make appropriate</p>	<p style="text-align: right;">111</p> <p>1 MS. KONKOLY: Objection. Potentially law</p> <p>2 enforcement privilege. Objection. Vague. You can</p> <p>3 answer to the extent you can.</p> <p>4 THE WITNESS: Generally, if they request</p> <p>5 it or if we think it is relevant, we wouldn't</p> <p>6 withhold that. And with our screening partners, if</p> <p>7 they request encounter information, we will</p> <p>8 generally provide it. But as a matter of daily</p> <p>9 practice, I have got to say that depends on the</p> <p>10 facts and circumstances. It could be because there</p> <p>11 were other obvious encounters that were related to</p> <p>12 this one and that might be something we would</p> <p>13 highlight or it may have been something that does</p> <p>14 not appear to be related and we might not</p> <p>15 necessarily highlight that. It would be -- it is</p> <p>16 hard to say.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. I am just trying to understand.</p> <p>19 <b>A. Sure.</b></p> <p>20 Q. I don't understand. A TSDB listee gets</p> <p>21 on a plane and flies from D.C. to Chicago. Does a</p> <p>22 human being at TSC decide who receives a</p>
<p style="text-align: right;">110</p> <p>1 notification decisions after that. It is possible</p> <p>2 we might. Again, I go back to what I said. It</p> <p>3 wouldn't necessarily be automatic.</p> <p>4 Q. Are you making individualized decisions</p> <p>5 about which encounter information to disseminate to</p> <p>6 which agencies?</p> <p>7 <b>A. Absolutely.</b></p> <p>8 Q. So every time there is an encounter, TSC</p> <p>9 makes a decision about which agencies receive</p> <p>10 information about that encounter?</p> <p>11 MS. KONKOLY: Objection.</p> <p>12 Mischaracterized his prior testimony. Objection.</p> <p>13 Vague. Objection. Potentially law enforcement</p> <p>14 sensitive. But you can answer to the extent you</p> <p>15 can.</p> <p>16 THE WITNESS: Generally yes, every time.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Okay. If CBP has an encounter with a</p> <p>19 TSDB listee, does -- I am sorry. Let me start all</p> <p>20 over. If CBP has an encounter with a TSDB listee,</p> <p>21 does CBP receive information from TSC about prior</p> <p>22 encounters with other agencies?</p>	<p style="text-align: right;">112</p> <p>1 notification that the TSDB listee has flown from</p> <p>2 D.C. to Chicago?</p> <p>3 <b>A. Yes. I'm sorry?</b></p> <p>4 MS. KONKOLY: Go ahead.</p> <p>5 THE WITNESS: Yeah.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Do recipients of TSDB encounter</p> <p>8 information request encounter data by a person or</p> <p>9 can they request it across a large group or a subset</p> <p>10 of persons?</p> <p>11 MS. KONKOLY: Objection. Vague.</p> <p>12 Objection. Potentially law enforcement. You can</p> <p>13 answer to the extent that you can.</p> <p>14 THE WITNESS: I think they could do both.</p> <p>15 I mean, certainly individuals -- and I can envision</p> <p>16 circumstances where they would for various reasons</p> <p>17 want to know about broader groupings for</p> <p>18 intelligence analysis or other purposes. So</p> <p>19 generally, yes.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Does TSC have agreements with other</p> <p>22 Federal Government agencies regarding the</p>

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<p style="text-align: right;">113</p> <p>1 dissemination of encounter information with TSDB  2 listees? I am going to say that question again. I  3 am going to try it again. Does TSC have agreements  4 or understandings with Federal Government agencies  5 that receive TSDB listee encounter information?  6 MS. KONKOLY: Is that the end of the  7 question?  8 MR. ABBAS: Yes.  9 MS. KONKOLY: Objection. Vague.  10 Objection potentially law enforcement. Objection.  11 Compound. You can answer to the extent that you  12 can.  13 THE WITNESS: Generally, yes. I would  14 say some of that is governed by via the Watch  15 Listing Advisory Council from a substantive  16 perspective. But then there is -- I would say there  17 are other technical agreements with, you know, how  18 that can happen.  19 BY MR. ABBAS:  20 Q. Are those technical agreements that you  21 are referring to memorialized in documents?  22 MS. KONKOLY: Objection. Vague.</p>	<p style="text-align: right;">115</p> <p>1 the break that before we start, defendants have  2 consulted regarding a certain line of questioning as  3 to the members of the Watch Listing Advisory  4 Council. And we have determined that there is  5 certain information that we can clarify and disclose  6 on the public record. So Mr. Groh is prepared to do  7 that.  8 THE WITNESS: So you had asked me  9 previously who sits on the council. And so we are  10 prepared to advise that also on the council is  11 Department of Homeland Security. And the National  12 Counter-Terrorism Center is the co-chair of the  13 Watch Listing Advisory Council together with the  14 TSC.  15 Q. So the Watch Listing Advisory Council is  16 co-chaired by TSC and NCTC?  17 <b>A. Correct.</b>  18 Q. And DHS, TSC, and CBP are all members of  19 the Watch Listing Advisory Council?  20 MS. KONKOLY: Asked and answered. That  21 would be in the record earlier as to who we were  22 able to disclose.</p>
<p style="text-align: right;">114</p> <p>1 Objection. Potentially law enforcement. You can  2 answer to the extent that you can.  3 THE WITNESS: Typically, those will be  4 memorialized in a memorandum of understanding with  5 whoever those partner agencies are.  6 MR. ABBAS: Arizona.  7 THE WITNESS: What happens if I say  8 Arizona?  9 MR. ABBAS: We go to lunch.  10 There is five minutes left on the tape.  11 Why don't we stop now and take 10 minutes while he  12 switches tape.  13 THE VIDEOGRAPHER: We are going off the  14 record. The time is 11:13 a.m.  15 (A recess was held.)  16 THE VIDEOGRAPHER: Here begins disk  17 number two in the videotaped deposition of Timothy  18 Paul Groh. The time on the video monitor is  19 11:27 a.m. We have been on the record for 1 hour 51  20 minutes and 35 seconds. And we are back on the  21 record.  22 MS. KONKOLY: And I was just noting in</p>	<p style="text-align: right;">116</p> <p>1 MR. ABBAS: I am not certain that's in  2 the record.  3 THE WITNESS: So I would say DHS and, of  4 course, CBP, and TSA subcomponents of DHS.  5 BY MR. ABBAS:  6 Q. And the FBI is also a member of the Watch  7 Listing Advisory Council?  8 <b>A. Yes.</b>  9 Q. All of the defendants in this action are  10 members of the Watch Listing Advisory Council?  11 MS. KONKOLY: Objection. Calls for a  12 legal conclusion.  13 BY MR. ABBAS:  14 Q. Oh, you don't know the defendants.  15 That's fine. That's fair.  16 <b>A. I don't remember precisely.</b>  17 Q. I withdraw the question. Yeah, that's  18 fine. So we are going to get back to TSDB purposes.  19 And I know -- I think I apologized right before the  20 break that I am probably going to cover some ground  21 that I have already covered. And that's just  22 because I have a bad memory.</p>

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<p style="text-align: right;">117</p> <p>1 What -- to what ends does TSC maintain --</p> <p>2 I am sorry. To what ends does TSC create, maintain,</p> <p>3 and disseminate the TSDB?</p> <p>4 MS. KONKOLY: Objection. Calls for</p> <p>5 information protected by the law enforcement</p> <p>6 privilege potentially. You can answer that to the</p> <p>7 extent that you can.</p> <p>8 THE WITNESS: I go back to the previous</p> <p>9 answer. We maintain this in order to facilitate a</p> <p>10 common operating picture amongst the intelligence</p> <p>11 screening and law enforcement communities in order</p> <p>12 to detect and ultimately prevent terrorism.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. What do you mean by common operating</p> <p>15 procedure? I am sorry. What do you mean by common</p> <p>16 operating picture?</p> <p><b>17 A. I mean that we are ensuring that all of</b></p> <p><b>18 these disparate parts of the government have</b></p> <p><b>19 information that enables their mission, and the</b></p> <p><b>20 information doesn't get stove-piped in one part of</b></p> <p><b>21 the government or another.</b></p> <p>22 Q. Do all agencies that receive TSDB</p>	<p style="text-align: right;">119</p> <p>1 you can without waiving the privilege.</p> <p>2 THE WITNESS: I believe I already said</p> <p>3 no, they don't all receive the same information.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. To what extent does the varied</p> <p>6 dissemination of TSDB information establish what you</p> <p>7 have referred to as a common operating picture?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Objection. Potentially calling for law enforcement,</p> <p>10 but you can about answer.</p> <p>11 THE WITNESS: I think the idea of a</p> <p>12 common operating picture is still -- still limited</p> <p>13 by appropriate legal and policy considerations and</p> <p>14 practical considerations about how information can</p> <p>15 be used for screening downstream from us.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Explain how the dissemination -- I am</p> <p>18 sorry. Explain how TSC's dissemination of TSDB</p> <p>19 information establishes among Federal Government</p> <p>20 agencies a common operating picture?</p> <p>21 MS. KONKOLY: Objection. Vague,</p> <p>22 compound, potentially law enforcement. But you can</p>
<p style="text-align: right;">118</p> <p>1 information receive all information regarding</p> <p>2 encounters with TSDB listees?</p> <p>3 MS. KONKOLY: Objection on the basis of</p> <p>4 law enforcement privilege, potentially SSI. You can</p> <p>5 answer that to the extent that you can.</p> <p>6 THE WITNESS: So you asked do all</p> <p>7 individual -- do all agencies that --</p> <p>8 MR. ABBAS: Do you want the question read</p> <p>9 back.</p> <p>10 THE WITNESS: Yeah, that would be</p> <p>11 helpful.</p> <p>12 (The read was read.)</p> <p>13 MS. KONKOLY: Same objections.</p> <p>14 THE WITNESS: So no, all individuals that</p> <p>15 -- or all agencies that receive the TSDB information</p> <p>16 do not receive information on all encounters.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Do all agencies that receive TSDB</p> <p>19 information receive the same TSDB information?</p> <p>20 MS. KONKOLY: Objection. Calls for</p> <p>21 information protected by the law enforcement</p> <p>22 privilege. You can answer that to the extent that</p>	<p style="text-align: right;">120</p> <p>1 answer.</p> <p>2 THE WITNESS: Well, for instance, I go</p> <p>3 back to my previous example of the Central</p> <p>4 Intelligence Agency having been aware of information</p> <p>5 about individuals, such as Khalid Al-Mihdhar being</p> <p>6 involved in Al-Qaeda plots. That information had</p> <p>7 not been shared with the FBI. And it certainly</p> <p>8 hadn't been shared with any local law enforcement</p> <p>9 border screeners. And as a result, despite the fact</p> <p>10 that the U.S. Government had a useful intelligence</p> <p>11 holding, that information was neither actionable nor</p> <p>12 useful.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. So the TSC sees as its role in the watch</p> <p>15 listing process the facilitating the dissemination</p> <p>16 of information that maybe CIA has for local law</p> <p>17 enforcement?</p> <p><b>18 A. To --</b></p> <p>19 MS. KONKOLY: Go ahead.</p> <p>20 THE WITNESS: I would say -- I wouldn't</p> <p>21 specify any particular agency. I would say</p> <p>22 generally held by intelligence and law enforcement</p>



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<p style="text-align: right;">121</p> <p>1 agencies.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Including state and local law enforcement</p> <p>4 agencies, correct?</p> <p>5 MS. KONKOLY: Objection. Vague.</p> <p>6 Objection. Potentially law enforcement. You can</p> <p>7 answer if you can.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Your example was a dissemination of CIA</p> <p>10 information via TSC to local law enforcement. I am</p> <p>11 just asking you a question about the example that</p> <p>12 you provided.</p> <p>13 MS. KONKOLY: Okay. Same objections.</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. ABBAS: Just for clarity, I am going</p> <p>16 to ask just that the question is repeated. I will</p> <p>17 ask her to repeat the question just so we know what</p> <p>18 you are saying yes to.</p> <p>19 (The record was read.)</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Now I remember the question. Let me try</p> <p>22 again.</p>	<p style="text-align: right;">123</p> <p>1 A. They had -- I believe local law</p> <p>2 enforcement did. I know they definitely had contact</p> <p>3 with 9/11 hijackers. And I believe they did with</p> <p>4 Al-Midhar. I am not entirely sure. But by way of</p> <p>5 example, I know other 9/11 hijackers and probably</p> <p>6 him.</p> <p>7 Q. So does TSC view as one of its objectives</p> <p>8 the sharing of information that some government</p> <p>9 agencies have to other government agencies as well</p> <p>10 as state and local law enforcement?</p> <p>11 MS. KONKOLY: Objection. Vague and</p> <p>12 compound.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I want to get back to this common</p> <p>16 operating picture. What information does TSC</p> <p>17 disseminate that establishes among Federal</p> <p>18 Government agencies a common operating picture?</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Let me withdraw that. That was a</p> <p>22 terrible question. How does TSC establish a common</p>
<p style="text-align: right;">122</p> <p>1 A. Do them all again.</p> <p>2 Q. Yeah. What was the name of the person in</p> <p>3 the example that you used? What was that name?</p> <p>4 A. The 9/11 Commission Report cites what I</p> <p>5 am referring to -- I believe it's Khalid Al-Midhar.</p> <p>6 It's one of the 9/11 hijackers.</p> <p>7 Q. Can you spell the last name the best you</p> <p>8 can? This is not agency binding.</p> <p>9 A. I think it's A-L-M-I-D-H-A-R.</p> <p>10 Q. And who is this person?</p> <p>11 A. He is one of the 9/11 hijackers.</p> <p>12 Q. And deceased, correct?</p> <p>13 A. Yes.</p> <p>14 Q. So in your example, you indicated that</p> <p>15 the CIA had information regarding -- what's his last</p> <p>16 name again?</p> <p>17 A. Al-Midhar.</p> <p>18 Q. Al-Midhar, correct?</p> <p>19 A. Yes. That's what the 9/11 Commission</p> <p>20 Report says.</p> <p>21 Q. And local law enforcement had an</p> <p>22 encounter with this person?</p>	<p style="text-align: right;">124</p> <p>1 operating picture among federal -- I am sorry.</p> <p>2 Let's try one more time. How does TSC establish a</p> <p>3 common operating picture among the recipients of</p> <p>4 TSDB information?</p> <p>5 MS. KONKOLY: Objection. Potentially</p> <p>6 calls for information protected by the law</p> <p>7 enforcement privilege. Objection. Vague. You can</p> <p>8 answer to the extent that you can.</p> <p>9 THE WITNESS: So intelligence or</p> <p>10 information that -- you know, that feeds nominations</p> <p>11 then is -- you know, the fact that the USG -- U.S.</p> <p>12 Government -- has information related to terrorism</p> <p>13 on individuals is -- then facilitates their</p> <p>14 screening mission to aid them. And possibly</p> <p>15 depending on the circumstances going back to</p> <p>16 discover what that derogatory information is, it</p> <p>17 gives them the opportunity to make further inquiry</p> <p>18 or otherwise whatever their particular mission is to</p> <p>19 accomplish that counter-terrorism mission. And the</p> <p>20 reporting back of encounters of that information</p> <p>21 completes that what we would describe as the</p> <p>22 intelligence cycle.</p>

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<p style="text-align: right;">125</p> <p>1 Q. Does -- it sounds like the purpose of</p> <p>2 what you are calling the intelligence cycle is</p> <p>3 broader than addressing imminent threats to</p> <p>4 commercial aviation, correct?</p> <p>5 MS. KONKOLY: Objection. Vague,</p> <p>6 mischaracterizes his prior testimony. You can</p> <p>7 answer.</p> <p>8 THE WITNESS: I believe I have already</p> <p>9 answered that, yes.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. So TSC disseminates TSDB information to</p> <p>12 counter threats that are not imminent, correct?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Mischaracterizes his prior testimony.</p> <p>15 THE WITNESS: What do you describe as</p> <p>16 imminent?</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Immediate, forthcoming, about to happen.</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 THE WITNESS: Well, I don't know. To</p> <p>21 clarify, it is to prevent things like 9/11. And if</p> <p>22 one of these individuals had been on the watch list</p>	<p style="text-align: right;">127</p> <p>1 answer that to the extent that you can. Also,</p> <p>2 vague.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. One of the databases that the Terror</p> <p>6 Screening Center creates, maintains, and</p> <p>7 disseminates is called the Terror Screening</p> <p>8 Database, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And there is another database that</p> <p>11 contains information regarding encounters with TSDB</p> <p>12 listees, correct?</p> <p>13 A. Yes.</p> <p>14 Q. What is the name of the database that TSC</p> <p>15 creates, maintains, and disseminates that contains</p> <p>16 encounter information with TSDB listees?</p> <p>17 MS. KONKOLY: I am going to object on the</p> <p>18 basis of the law enforcement privilege. But you can</p> <p>19 answer that to the extent that you can.</p> <p>20 THE WITNESS: The database that maintains</p> <p>21 encounters is now called TSS. I don't remember, to</p> <p>22 be honest, what the TSS stands for. It used to be</p>
<p style="text-align: right;">126</p> <p>1 and had been stopped in a traffic stop as they drove</p> <p>2 across the country, I don't know if that meets your</p> <p>3 definition of imminent. But that is something we</p> <p>4 are trying to detect in order to ultimately thwart</p> <p>5 that. But I don't know what your definition of</p> <p>6 imminent in that case is.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. I am just trying to get a little</p> <p>9 elaboration on what this common operating picture</p> <p>10 is. Does the -- does the creation of TSDB</p> <p>11 information, which include this encounter</p> <p>12 information, correct -- does the TSDB -- I wanted to</p> <p>13 clarify. Is encounter information regarding TSDB</p> <p>14 listees in a separate database from the TSDB itself?</p> <p>15 A. Yes.</p> <p>16 Q. So there is two different databases that</p> <p>17 -- maybe there is a billion. There are at least two</p> <p>18 different databases that the Terror Screening Center</p> <p>19 creates, maintains, and disseminates?</p> <p>20 MS. KONKOLY: Objection.</p> <p>21 Mischaracterized his prior testimony. Objection.</p> <p>22 Potentially law enforcement privilege. You can</p>	<p style="text-align: right;">128</p> <p>1 called the Encounter Management Application.</p> <p>2 MR. ABBAS: Indiana.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. TSS is the name of the database that</p> <p>5 contains DHS listee encounter information, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You don't know what TSS stands for,</p> <p>8 correct?</p> <p>9 A. I don't.</p> <p>10 Q. When was TSS created?</p> <p>11 A. It shifted over approximately a year ago.</p> <p>12 Q. It shifted over. What is that?</p> <p>13 A. From MO -- the previous system was</p> <p>14 replaced by TSS.</p> <p>15 Q. So there was a previous system -- there</p> <p>16 was a -- I'm sorry. Let me start over all. There</p> <p>17 was a system prior to TSS that contained TSDB listee</p> <p>18 encounter information, correct?</p> <p>19 A. Correct.</p> <p>20 Q. What was the name of the system prior to</p> <p>21 TSS that contained TSDB listee encounter</p> <p>22 information?</p>

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<p style="text-align: right;">129</p> <p>1 MS. KONKOLY: Objection. Asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: It is EMA, which stands for</p> <p>4 Encounter Management Application. We refer to it as</p> <p>5 EMA.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. So EMA?</p> <p>8 A. Yes.</p> <p>9 Q. Does TSC -- TSC creates, maintains, and</p> <p>10 disseminates TSS, correct?</p> <p>11 A. Disseminates -- I just want to make a</p> <p>12 distinction between the way TSDB is disseminated.</p> <p>13 It is quite different from the way EMA or encounter</p> <p>14 information, would be a better way to put it, is</p> <p>15 disseminated. They are not the same kind of</p> <p>16 automatic access to that data that there is for the</p> <p>17 Terror Screening Database. In some ways they are</p> <p>18 quite different.</p> <p>19 Q. Okay. So they are disseminated</p> <p>20 differently and access to them -- I'm sorry. TSC</p> <p>21 regulates access to EMA information differently than</p> <p>22 -- I am sorry. Let me back up. TSC manages access</p>	<p style="text-align: right;">131</p> <p>1 believe, and TSC probably in concurrence decided</p> <p>2 that that was the thing to do. I assume that that</p> <p>3 was then ratified by the Watch Listing Advisory</p> <p>4 Council.</p> <p>5 MR. ABBAS: Indiana.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. The -- why did TSC assume control over</p> <p>8 encounter information from the FBI?</p> <p>9 MS. KONKOLY: Objection. Calls for a</p> <p>10 legal conclusion. Objection. Potentially</p> <p>11 privileged under the law enforcement privilege. But</p> <p>12 you can answer if you know without waiving the</p> <p>13 privilege.</p> <p>14 THE WITNESS: I think it was found -- it</p> <p>15 was believed to be more efficient to have the folks</p> <p>16 that made decisions on dissemination co-located with</p> <p>17 the individuals who received the initial report of</p> <p>18 the encounter. It was an opportunity for better</p> <p>19 collaboration. And to the best of my knowledge,</p> <p>20 that's why a decision was made.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Did the transfer of encounter information</p>
<p style="text-align: right;">130</p> <p>1 to encounter information differently than it manages</p> <p>2 access to TSDB information?</p> <p>3 A. Correct.</p> <p>4 Q. Was it always TSC that managed -- I am</p> <p>5 sorry. Was it always TSC that always maintained</p> <p>6 encounter information regarding TSDB listees?</p> <p>7 MS. KONKOLY: Objection. Vague,</p> <p>8 objection. Potentially law enforcement privilege.</p> <p>9 Objection. Scope. But you can answer that if you</p> <p>10 know.</p> <p>11 THE WITNESS: The -- the encounters have</p> <p>12 always been reported to TSC. There was a change, I</p> <p>13 believe, in about 2013 where that encounter</p> <p>14 information used to be housed at FBI and is now</p> <p>15 housed at TSC.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Who made the decision to transfer</p> <p>18 encounter information from FBI to TSC?</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 Objection. Potentially law enforcement privilege.</p> <p>21 Objection. Scope. You can answer if you know.</p> <p>22 THE WITNESS: Certainly the FBI, I</p>	<p style="text-align: right;">132</p> <p>1 from the FBI to the Terror Screening Center involve</p> <p>2 the export of information that TSC did not already</p> <p>3 have?</p> <p>4 A. I am sorry. To export to who?</p> <p>5 Q. TSC. From the FBI to TSC. Let me try to</p> <p>6 ask it a different way.</p> <p>7 A. Sure.</p> <p>8 Q. Was the FBI -- did the FBI collect</p> <p>9 encounter information -- I am sorry. Prior to TSS,</p> <p>10 did the FBI collect encounter information that TSC</p> <p>11 didn't have?</p> <p>12 A. I believe TSC had access to that</p> <p>13 information. But yes, I think -- it was really a</p> <p>14 two-step -- it was really a two-step process prior</p> <p>15 that we have now made more seamless by co-locating</p> <p>16 and honestly bringing what was previously separate</p> <p>17 systems together.</p> <p>18 Q. So now there is only one single system</p> <p>19 that houses TSDB listee encounter information,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the name of that system is TSS?</p>

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<p style="text-align: right;">133</p> <p>1     <b>A. Correct.</b></p> <p>2     Q. We don't know what TSS stands for, but</p> <p>3 that's the name of the system?</p> <p>4     <b>A. Yes.</b></p> <p>5     Q. Is the TSDB and TSS cross-referenced by</p> <p>6 listee name or in some other way?</p> <p>7     <b>A. Certainly by --</b></p> <p>8     Q. I am sorry for interrupting you. Let me</p> <p>9 back up. That was a bad question. What is the</p> <p>10 relationship between TSS and TSDB?</p> <p>11    <b>A. Well, someone would not be in TSS unless</b></p> <p>12 <b>they had been in TSDB, first of all. There is a</b></p> <p>13 <b>reference number that would be -- that would tie the</b></p> <p>14 <b>records together. And so that particular reference</b></p> <p>15 <b>number would be -- besides the name -- would be the</b></p> <p>16 <b>identifier.</b></p> <p>17    Q. Does TSS and TSDB, do those two databases</p> <p>18 automatically populate each other in some manner?</p> <p>19    <b>A. No.</b></p> <p>20    Q. So any change to TSS requires a human</p> <p>21 being to make it?</p> <p>22       MS. KONKOLY: Objection.</p>	<p style="text-align: right;">135</p> <p>1 You can answer it if you can.</p> <p>2       THE WITNESS: Yeah, I don't believe I can</p> <p>3 answer that without -- without getting into</p> <p>4 privilege.</p> <p>5       MR. ABBAS: Can you repeat the question?</p> <p>6 (The record was read.)</p> <p>7       MS. KONKOLY: Same objections.</p> <p>8       MR. ABBAS: What are the objections?</p> <p>9       MS. KONKOLY: That it calls for</p> <p>10 information protected by the law enforcement</p> <p>11 privilege. And I said he can answer to the extent</p> <p>12 that he could. And he said that he can't.</p> <p>13       THE WITNESS: And I think it also</p> <p>14 involves state secrets.</p> <p>15       MS. KONKOLY: Well, then state secrets as</p> <p>16 well.</p> <p>17       BY MR. ABBAS:</p> <p>18    Q. Does -- flight -- TSC is aware that TSA</p> <p>19 keeps track of flight records of air travelers,</p> <p>20 correct?</p> <p>21       MS. KONKOLY: Objection. SSI, potential</p> <p>22 law enforcement. You can answer that if you can.</p>
<p style="text-align: right;">134</p> <p>1 Mischaracterized his prior testimony. Objection.</p> <p>2 Potential law enforcement. You can answer.</p> <p>3       BY MR. ABBAS:</p> <p>4    Q. Let me withdraw the question. Does -- in</p> <p>5 order to make a change to TSS, does a human being</p> <p>6 have to make a change to TSS? I am sorry. Let me</p> <p>7 try one more time. Does a change to TSS require a</p> <p>8 human being's involvement? There we go.</p> <p>9       MS. KONKOLY: Objection insofar as it</p> <p>10 calls for information protected by the law</p> <p>11 enforcement privilege. But you can answer if you</p> <p>12 can.</p> <p>13       THE WITNESS: Yes, individuals have to --</p> <p>14 there may be some data that comes in automatically</p> <p>15 from various feeds. But, ultimately, nothing</p> <p>16 happens without a human being's involvement with</p> <p>17 TSS.</p> <p>18       BY MR. ABBAS:</p> <p>19    Q. What information enters TSS automatically</p> <p>20 without a human being's involvement?</p> <p>21       MS. KONKOLY: Objection insofar as that</p> <p>22 calls for law enforcement sensitive information.</p>	<p style="text-align: right;">136</p> <p>1       THE WITNESS: I mean, I generally know</p> <p>2 that TSA screens against flights, and there are</p> <p>3 electronic systems that are involves.</p> <p>4       BY MR. ABBAS:</p> <p>5    Q. And that per its screening practices,</p> <p>6 records are generated of each flight that every</p> <p>7 person undertakes?</p> <p>8       MS. KONKOLY: I am going to object.</p> <p>9 Potentially SSI, potentially law enforcement. That</p> <p>10 is also a question that calls for information in the</p> <p>11 possession of another agency. You can speak to your</p> <p>12 understanding. But his answer will not bind.</p> <p>13       MR. ABBAS: I mean, that stuff is in the</p> <p>14 overview document.</p> <p>15       MS. KONKOLY: Okay.</p> <p>16       MR. ABBAS: It in the overview document.</p> <p>17       THE WITNESS: Yeah, but you used certain</p> <p>18 words like every and every passenger. And records</p> <p>19 are made -- I don't know -- you know, we could -- a</p> <p>20 bunch of lawyers in a room could spend all day on</p> <p>21 that, right?</p> <p>22       BY MR. ABBAS:</p>

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<p>137</p> <p>1 Q. Sure, sure. And it is not a trick</p> <p>2 question. And if I am wrong, tell me I am wrong.</p> <p>3 TSC understands that TSC creates records that regard</p> <p>4 each flight that every passenger that crosses U.S.</p> <p>5 interspace undertakes?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 Objection. Potentially SSI or law enforcement.</p> <p>8 THE WITNESS: Yeah, the way you phrase</p> <p>9 that, I don't know.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does TSC have information about the</p> <p>12 flights that TSDB listees undertake?</p> <p>13 MS. KONKOLY: Objection insofar as that</p> <p>14 answer calls for information protected by the law</p> <p>15 enforcement privilege or potentially the state</p> <p>16 secrets. But you can answer it to the extent you --</p> <p>17 or SSI.</p> <p>18 MR. ABBAS: I am just asking for TSC</p> <p>19 information. I am not asking for TSA information.</p> <p>20 MS. KONKOLY: Okay. The objections</p> <p>21 stand. You can answer to the extent that you can.</p> <p>22 THE WITNESS: Sorry. Can you repeat it</p>	<p>139</p> <p>1 referring to in that answer?</p> <p>2 <b>A. I don't think I can go --</b></p> <p>3 MS. KONKOLY: I object based on SSI and</p> <p>4 also that being information within the purview of</p> <p>5 another agency.</p> <p>6 Q. So you can tell me that TSC has</p> <p>7 information that TSA collects about people's</p> <p>8 travels, but you can't tell me what information TSC</p> <p>9 collects -- TSA collects.</p> <p>10 MS. KONKOLY: Objection. Vague.</p> <p>11 THE WITNESS: I don't understand.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Is there a subset of TSDB information</p> <p>14 that all federal agencies receive?</p> <p>15 MS. KONKOLY: Objection insofar as that</p> <p>16 calls for information subject to the law enforcement</p> <p>17 privilege. You can answer it if you can.</p> <p>18 THE WITNESS: I haven't testified that</p> <p>19 all federal agencies receive TSDB information, so.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Of the federal agencies that do receive</p> <p>22 TSDB information, is there any subset of TSDB</p>
<p>138</p> <p>1 because I lost it?</p> <p>2 MR. ABBAS: Can you read it back? I</p> <p>3 don't remember, either.</p> <p>4 (The record was read.)</p> <p>5 MS. KONKOLY: And I am going to assert</p> <p>6 all the same objections. You can answer to the</p> <p>7 extent that you can.</p> <p>8 THE WITNESS: I would say generally I</p> <p>9 think they have information.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. By "they," you mean TSC?</p> <p>12 <b>A. TSA.</b></p> <p>13 Q. Has information about -- I mean --</p> <p>14 <b>A. About --</b></p> <p>15 MR. ABBAS: I'm sorry. Let's do this.</p> <p>16 Can you read back the answer?</p> <p>17 (The record was read.)</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Who is "they" in the answer?</p> <p>20 <b>A. That would be TSA in response to your</b></p> <p>21 <b>question.</b></p> <p>22 Q. And what is the information that you are</p>	<p>140</p> <p>1 information that all of them receive?</p> <p>2 MS. KONKOLY: Objection insofar as it</p> <p>3 calls for information protected by the law</p> <p>4 enforcement privilege. You can answer if you can.</p> <p>5 THE WITNESS: As a practical matter,</p> <p>6 there probably is. I wouldn't say that it is</p> <p>7 something that we have necessarily defined that way.</p> <p>8 These are kind of VIN diagrams that overlap. So as</p> <p>9 a practical matter, there probably is. I probably</p> <p>10 couldn't define for you exactly what that is,</p> <p>11 because there are separate rules that govern each</p> <p>12 one of those what we would call an export.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Are the rules that govern exports of TSDB</p> <p>15 information newly created every time that there is</p> <p>16 an export of TSDB information?</p> <p>17 MS. KONKOLY: Objection insofar as it</p> <p>18 calls for law enforcement information. You can</p> <p>19 answer if you can.</p> <p>20 THE WITNESS: No. Generally, those rules</p> <p>21 are -- they may be adjusted from time to time. But</p> <p>22 many of these exports happen automatically and</p>

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<p>141</p> <p>1 continuously.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Okay. So I still don't have a sense of</p> <p>4 what TSC does to establish a common operating</p> <p>5 picture among federal agencies to detect and stop</p> <p>6 terrorism. I am sorry. Identify all actions TSC</p> <p>7 takes to accomplish a common operating picture among</p> <p>8 recipients of TSDB information or TSS information.</p> <p>9 MS. KONKOLY: Objection insofar as that</p> <p>10 would implicate information protected by the law</p> <p>11 enforcement privilege or SSI. Also, vague. Also</p> <p>12 compound. You can answer to the extent that you</p> <p>13 can.</p> <p>14 THE WITNESS: Well, since that's</p> <p>15 everything that TSC more or less does, we take</p> <p>16 intelligence and law enforcement-related</p> <p>17 information. We build a reliable thorough and</p> <p>18 current list from that information. We disseminate</p> <p>19 that information to screening partners commensurate</p> <p>20 with the law, with policy, with technical and</p> <p>21 practical considerations to screening partners.</p> <p>22 We record information about encounters.</p>	<p>143</p> <p>1 specific context?</p> <p>2 A. By equities -- we talked about earlier</p> <p>3 generally the nominator, the organization that had</p> <p>4 the information originally would tend to have. I</p> <p>5 would define that as an equity. An organization if</p> <p>6 it is something within their mission. So if they</p> <p>7 are responsible for aviation security and it</p> <p>8 involves a flight, they would have an equity. If it</p> <p>9 involves a border encounter, then obviously border</p> <p>10 screening organizations have equities. If it is a</p> <p>11 domestic encounter, generally the FBI would have an</p> <p>12 equity. There are others, but that's generally what</p> <p>13 I mean.</p> <p>14 Q. Aside from establishing a common</p> <p>15 operating picture among recipients of TSDB</p> <p>16 information, what else does TSC utilize the TSDB</p> <p>17 for?</p> <p>18 MS. KONKOLY: Objection. Vague.</p> <p>19 Objection insofar as it calls for information</p> <p>20 protected by the law enforcement privilege. You can</p> <p>21 answer.</p> <p>22 THE WITNESS: Well, inasmuch as it is not</p>
<p>142</p> <p>1 And between that, the other piece I left out of that</p> <p>2 was we conduct identity resolution with the partner</p> <p>3 to make sure that the person encountered is indeed</p> <p>4 somebody that we are looking for, to exclude people</p> <p>5 that are not on the TSDB and that we are not trying</p> <p>6 to screen against. We then disseminate that</p> <p>7 information in a way that it completes the</p> <p>8 intelligence cycle and other people have operational</p> <p>9 or intelligence or law enforcement equities --</p> <p>10 screening equities that can effectively complete</p> <p>11 their mission.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Who decides which agencies have equities</p> <p>14 in a situation that regards TSDB listee?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 THE WITNESS: Do you mean post-encounter?</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Probably more generally. I don't know</p> <p>19 what you mean by equities. What do you mean when</p> <p>20 you say -- you used the word equities?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What do you mean by that term in this</p>	<p>144</p> <p>1 covered by the common operating picture discussion,</p> <p>2 I think to enable all of our partner agencies to</p> <p>3 accomplish their mission and ultimately prevent</p> <p>4 terrorism even above that.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does the -- does each person included in</p> <p>7 the Terror Screening Database in TSC's view pose a</p> <p>8 threat to commercial aviation?</p> <p>9 MS. KONKOLY: Objection. Vague. Calls</p> <p>10 for speculation. Objection insofar as it calls for</p> <p>11 information protected by the law enforcement</p> <p>12 privilege. You can answer to the extent that you</p> <p>13 can.</p> <p>14 THE WITNESS: Each person in the database</p> <p>15 has information about them that relates to terrorism</p> <p>16 specifically and inasmuch as terrorists generally</p> <p>17 pose a threat to aviation, I think, potentially.</p> <p>18 But I do think there, you know, within the Terror</p> <p>19 Screening Center of course we have different</p> <p>20 subcomponents, which more neck at threats to</p> <p>21 aviation.</p> <p>22 BY MR. ABBAS:</p>

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<p>145</p> <p>1 Q. A person can be included -- I am sorry.</p> <p>2 TSC includes persons in the TSDB for whom it</p> <p>3 possesses no information that they pose any threat</p> <p>4 to commercial aviation, correct?</p> <p>5 MS. KONKOLY: Objection.</p> <p>6 Mischaracterized his prior testimony. Objection</p> <p>7 vague. Objection insofar as that calls for</p> <p>8 information by the law enforcement privilege. You</p> <p>9 can answer to the extent that you can.</p> <p>10 THE WITNESS: I believe I already</p> <p>11 testified I can't agree with that statement.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Explain your disagreement with that</p> <p>14 statement.</p> <p>15 MS. KONKOLY: Objection insofar as that</p> <p>16 calls for any information protected by the law</p> <p>17 enforcement privilege. You can answer to the extent</p> <p>18 that you can.</p> <p>19 THE WITNESS: You said -- well --</p> <p>20 MR. ABBAS: Do you want her to read it</p> <p>21 back?</p> <p>22 THE WITNESS: Yeah, read it back. I</p>	<p>147</p> <p>1 Mischaracterized prior testimony. Objection. Asked</p> <p>2 and answered. Objection insofar as it implicates</p> <p>3 law enforcement or SSI. But you can answer.</p> <p>4 THE WITNESS: I think the gist of your</p> <p>5 question, the answer is what I just previously</p> <p>6 stated, that every record does not have</p> <p>7 particularized information with respect to aviation</p> <p>8 terrorism. And I would say that that was never the</p> <p>9 intent.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. And I just want to make sure. You said</p> <p>12 record. I just want to make sure I got exactly what</p> <p>13 record you are referring to. TSDB records do not,</p> <p>14 as a rule, always contain information that's</p> <p>15 particular to -- I am sorry. Let me start all over.</p> <p>16 Not all TSDB records contain information regarding</p> <p>17 an aviation security threat, correct?</p> <p>18 <b>A. So let me just clarify here. TSDB does</b></p> <p>19 <b>not contain the actual derogatory information. Now,</b></p> <p>20 <b>it is linked to other systems, which do contain that</b></p> <p>21 <b>derogatory information. So in no TS -- within the</b></p> <p>22 <b>TSDB, there is no particularized derogatory</b></p>
<p>146</p> <p>1 think it was --</p> <p>2 (The record was read.)</p> <p>3 MS. KONKOLY: Same objections. And I</p> <p>4 would also add to the extent that it calls for SSI.</p> <p>5 But you can answer.</p> <p>6 THE WITNESS: My previous answer, the one</p> <p>7 before that, spoke to the fact that I think</p> <p>8 terrorism in general poses a threat as history has</p> <p>9 shown to aviation. There is not particularized</p> <p>10 aviation threat information in every record, but</p> <p>11 there is a relationship to terrorism.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. So there are TSDB listees for whom TSC</p> <p>14 possesses no information that they pose a threat to</p> <p>15 commercial aviation?</p> <p>16 MS. KONKOLY: Objection.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. I'm sorry. Let me withdraw that</p> <p>19 question. TSC includes persons in the TSDB for whom</p> <p>20 they have no information that that person poses a</p> <p>21 particularized threat to commercial aviation?</p> <p>22 MS. KONKOLY: Objection.</p>	<p>148</p> <p>1 <b>information of anyone. But we do have a record of</b></p> <p>2 <b>where to -- well, we can find that information in</b></p> <p>3 <b>holdings of the National Counter-Terrorism Center or</b></p> <p>4 <b>the FBI.</b></p> <p>5 <b>That said, to get in TSDB, we have to</b></p> <p>6 <b>have access to derogatory information. And when you</b></p> <p>7 <b>access that derogatory information, which supports</b></p> <p>8 <b>the TSDB record, then they do not all have</b></p> <p>9 <b>particularized aviation threat information, although</b></p> <p>10 <b>they do have information related to terrorism.</b></p> <p>11 Q. So particularized aviation threat</p> <p>12 information is not a requirement for being included</p> <p>13 in the TSDB, correct?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Okay. So we have talked about the TSDB,</p> <p>16 the TSS, and then there is a database that contains</p> <p>17 all the derogatory information that's the basis of</p> <p>18 the TSDB, correct?</p> <p>19 <b>A. There are actually two databases.</b></p> <p>20 Q. There's two databases, okay. What two</p> <p>21 databases contain the derogatory information that is</p> <p>22 the basis for the TSDB?</p>

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<p style="text-align: right;">149</p> <p>1 MS. KONKOLY: Objection insofar as that</p> <p>2 answer calls for information protected by the law</p> <p>3 enforcement privilege. You can answer to the extent</p> <p>4 you can.</p> <p>5 THE WITNESS: So the National</p> <p>6 Counter-Terrorism Center maintains what's known as</p> <p>7 TIDE, the Terrorist Identities Datamart Environment.</p> <p>8 And the FBI maintains Sentinel. And a distinction</p> <p>9 is made between records that relate to what we would</p> <p>10 define as domestic terrorism and what we would</p> <p>11 define as international terrorism.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Does TSC possess complete access to</p> <p>14 NCTC's TIDE database?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection insofar as it calls for law enforcement</p> <p>17 sensitive information. You can answer if you can.</p> <p>18 THE WITNESS: When you say -- I have to</p> <p>19 qualify complete. There may be some administrative</p> <p>20 functions or other pieces that we don't have access</p> <p>21 to. But I would say generally the parts that would</p> <p>22 contain derogatory information supporting TSDB, yes,</p>	<p style="text-align: right;">151</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does TSC have access to all derogatory</p> <p>3 information contained in the FBI's Sentinel</p> <p>4 database?</p> <p>5 MS. KONKOLY: Objection insofar as it</p> <p>6 calls for information protected by the law</p> <p>7 enforcement privilege. You can answer to the extent</p> <p>8 that you can.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does TSC -- okay. So does TSC tell</p> <p>12 other -- I'm sorry. Does TSC direct recipients of</p> <p>13 TSDB information about how the recipients of TSDB</p> <p>14 information should utilize TSDB information?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection insofar as it calls for information</p> <p>17 protected by law enforcement. You can answer to the</p> <p>18 extent that you can.</p> <p>19 THE WITNESS: No. We provide the</p> <p>20 information, and then they exercise their mission</p> <p>21 pursuant to their own authorities. They make their</p> <p>22 own decisions with what to do with it.</p>
<p style="text-align: right;">150</p> <p>1 we have access.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. And so thanks for that clarification.</p> <p>4 Let me just rephrase. TSC has complete access to</p> <p>5 the substantive derogatory information. I'm sorry.</p> <p>6 Let me start all over. TSC has complete access to</p> <p>7 the derogatory information contained in NCTC's TIDE</p> <p>8 database, correct?</p> <p>9 A. Yes.</p> <p>10 MS. KONKOLY: Objection insofar as it</p> <p>11 calls for a law enforcement privilege. And asked</p> <p>12 and answered, but.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Does -- so Sentinel is the FBI's</p> <p>15 database?</p> <p>16 A. Yes.</p> <p>17 Q. TSC -- and that database contains</p> <p>18 derogatory information that forms the basis of the</p> <p>19 TSDB?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 THE WITNESS: For domestic terrorism</p> <p>22 cases.</p>	<p style="text-align: right;">152</p> <p>1 MR. ABBAS: So it is 12:10 now. I am</p> <p>2 happy to keep on going, but lunch is whenever you</p> <p>3 want it to be. So when --</p> <p>4 THE WITNESS: I usually don't eat lunch.</p> <p>5 But I assume that members of the team here probably</p> <p>6 do.</p> <p>7 MS. KONKOLY: We have only been going</p> <p>8 about 40 minutes since we came back. I would like</p> <p>9 to keep going.</p> <p>10 MR. ABBAS: But I would like to set a</p> <p>11 time for lunch. Like do you want to set it for 1,</p> <p>12 1:15? I am happy to set it as you want to set it.</p> <p>13 But I would like to set a time for lunch.</p> <p>14 MS. KONKOLY: 1:30 would get us halfway.</p> <p>15 Maybe we could take a short break in between.</p> <p>16 MR. ABBAS: 1:30 feels a little far away.</p> <p>17 I think I could probably -- I will need a break by</p> <p>18 one.</p> <p>19 MS. KONKOLY: Okay. We can say one.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Beyond establishing a common operating</p> <p>22 picture, does TSC maintain TSDB for any other</p>



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<p style="text-align: right;">153</p> <p>1 purposes?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 Objection. Insofar as it calls for information</p> <p>4 protected by the law enforcement privilege. You can</p> <p>5 answer to the extent that you can.</p> <p>6 THE WITNESS: I think I did already. I</p> <p>7 think, you know, the general -- it is a common</p> <p>8 operating picture. But inasmuch as that's not</p> <p>9 identical to facilitating the missions of our</p> <p>10 partner agencies and, in general, preventing</p> <p>11 terrorism, I would just add those two things.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. How does TSC's TSDB detect and stop</p> <p>14 terrorism?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection. Calls for speculation. Objection</p> <p>17 insofar as it calls for information protected by the</p> <p>18 law enforcement or potentially the state secrets or</p> <p>19 SSI privileges. You can answer to the extent you</p> <p>20 can.</p> <p>21 THE WITNESS: It provides a mechanism for</p> <p>22 agencies effectively through an established set of</p>	<p style="text-align: right;">155</p> <p>1 airports?</p> <p>2 MS. KONKOLY: Objection insofar as that</p> <p>3 calls for law enforcement or SSI information. But</p> <p>4 you can answer.</p> <p>5 THE WITNESS: If you mean how they are</p> <p>6 screened at the airport, I mean, obviously they --</p> <p>7 putting people on the list, that may affect</p> <p>8 somebody's potential screening. But -- but, you</p> <p>9 know, we do not tell TSA how to screen, if that's</p> <p>10 what you mean.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Can -- when TSC disseminates -- I am</p> <p>13 sorry. When TSC disseminates TSDB information to</p> <p>14 TSA, does that information compel TSA to screen the</p> <p>15 listee in a particular manner?</p> <p>16 MS. KONKOLY: Objection insofar as that</p> <p>17 calls for information protected by SSI or law</p> <p>18 enforcement. Also to the extent that it calls for</p> <p>19 information within the purview of the Transportation</p> <p>20 Security Administration. It goes to TSC. But you</p> <p>21 can answer to the extent that you can and vague.</p> <p>22 THE WITNESS: Yeah, inasmuch as -- I</p>
<p style="text-align: right;">154</p> <p>1 practices and procedures to share information in a</p> <p>2 way that was not available -- in many ways that were</p> <p>3 not available before so they can each exercise their</p> <p>4 authorities to accomplish their missions, but also</p> <p>5 kind of through the aggregation of those</p> <p>6 responsibilities to effectively use existing</p> <p>7 authorities to detect and stop terrorism. Sometimes</p> <p>8 it is the detection. And sometimes it is the actual</p> <p>9 interdiction or, you know, the actual prevention of</p> <p>10 terrorist activities or at least supports</p> <p>11 investigations that will accomplish those goals.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. But TSC doesn't determine how</p> <p>14 investigations are run, correct?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. TSC does not conduct its own</p> <p>17 investigations, correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. And TSC does not decide who is arrested</p> <p>20 or charged with a crime?</p> <p>21 <b>A. Absolutely not.</b></p> <p>22 Q. TSC does not decide who screens at the</p>	<p style="text-align: right;">156</p> <p>1 mean, we certainly do not set standards for TSA on</p> <p>2 how they -- on how they screen.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. It is up to them?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Is there anything an agency can do with</p> <p>7 TSDB information that would cause TSC to stop giving</p> <p>8 the agency TSDB information?</p> <p>9 MS. KONKOLY: Objection. Vague. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: If -- if the TSC believed</p> <p>12 an agency was violating the law or the Constitution,</p> <p>13 then we would certainly raise that, you know,</p> <p>14 through the Watch Listing Advisory Council. Or if</p> <p>15 it was exigent through the chain of command of the</p> <p>16 FBI, I can expect that that would be raised to</p> <p>17 competent authority to address that.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Does the TSC consider it to be part of</p> <p>20 its role in the watch listing process to decide who</p> <p>21 receives TSDB information?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>

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<p style="text-align: right;">157</p> <p>1 THE WITNESS: Again, through the Watch  2 Listing Advisory Council, I think everybody that  3 sits on the council plays a role in deciding what is  4 -- what would be effective, appropriate, efficient,  5 legal, all of those things. So I think all of those  6 uses of information would be the kinds of things we  7 would discuss in that forum.  8 BY MR. ABBAS:  9 Q. Does the TSC impose any limits on its --  10 let me start over. Does the TSC impose any limits  11 on agencies that receive -- let me start all over  12 one more time. Does TSC impose any limits on  13 recipients of TSDB information that limit those  14 recipients from further sharing TSDB information?  15 MS. KONKOLY: Objection. Vague, compound  16 insofar as it implicates law enforcement privilege,  17 but you can answer.  18 THE WITNESS: I think it goes back to the  19 aforementioned. I mean, we have an understanding of  20 the sort of use of that information through the  21 Watch Listing Advisory Council. There also may be  22 in some of those technical MOU's I described</p>	<p style="text-align: right;">159</p> <p>1 potentially state secrets.  2 BY MR. ABBAS:  3 Q. Does -- can TSC refuse to disseminate  4 TSDB information to foreign governments that engage  5 in a pattern of human rights abuses?  6 MS. KONKOLY: Objection. Calls for  7 speculation. Objection. Vague. Objection insofar  8 as that calls for information protected by the law  9 enforcement or the state secrets privilege. You can  10 answer to the extent you can.  11 THE WITNESS: I think the only thing I  12 can say about that is the potential for that is  13 absolutely a consideration in that aforementioned  14 decision.  15 BY MR. ABBAS:  16 Q. Does TSC disseminate TSDB information to  17 foreign governments that engage in patterns of  18 torture?  19 MS. KONKOLY: Objection. Vague.  20 Objection. Calls for speculation, legal conclusion,  21 also insofar as it implicates information protected  22 by the law enforcement or potentially state secrets.</p>
<p style="text-align: right;">158</p> <p>1 earlier, there may be more specific parameters that  2 we agree. But that's a bilateral agreement between  3 the agencies.  4 And, again, if we thought that somebody  5 was not living up to that agreement, we would either  6 address it directly with that organization or  7 through the aforementioned processes.  8 MR. ABBAS: Arizona.  9 BY MR. ABBAS:  10 Q. Who decides which foreign governments  11 receive TSDB information?  12 MS. KONKOLY: Objection. Vague.  13 Objection insofar as that calls for the law  14 enforcement -- information protected by the law  15 enforcement or potential state secrets. But you can  16 answer to the extent that you can.  17 THE WITNESS: I don't believe I can  18 answer that without violating a privilege.  19 MR. ABBAS: What's the privilege? What's  20 the privilege over who decides what foreign  21 governments receive TSDB information?  22 MS. KONKOLY: The law enforcement or</p>	<p style="text-align: right;">160</p> <p>1 You can answer to the extent that you can.  2 THE WITNESS: Boy, that's a loaded word  3 that I hesitate to understand what your definition  4 of that is. And so I think that's probably so vague  5 that I can't answer it.  6 BY MR. ABBAS:  7 Q. We will go with a more general term.  8 Human rights abuses.  9 MR. ABBAS: Can you read -- I forget the  10 question. Can you read it back just to me so that I  11 will see it again?  12 (The record was read.)  13 MR. ABBAS: So I will rephrase the  14 question.  15 BY MR. ABBAS:  16 Q. Does TSC disseminate TSDB information to  17 foreign governments that engage in a pattern of  18 human rights abuses?  19 MS. KONKOLY: Objection. Asked and  20 answered. Objection. Vague. Objection. Calls for  21 a legal conclusion. Objection insofar as that  22 information calls for information protected by</p>

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<p>161</p> <p>1 either the law enforcement or the state secrets 2 privilege. 3 THE WITNESS: I have already testified 4 that there are more than 60 countries that we have 5 agreements with. And I would hesitate to name any 6 60 countries that someone would not have an 7 allegation of a human rights abuse amongst one of th 8 60. So, again, I feel like this is so vague I can't 9 answer it. 10 BY MR. ABBAS: 11 Q. Does TSC know names of the foreign 12 governments that it disseminates TSDB information 13 to? 14 <b>A. Yes.</b> 15 Q. Does TSC dissemination TSS information to 16 foreign governments? 17 MS. KONKOLY: Objection insofar as that 18 calls for information protected by the law 19 enforcement or potentially the state secrets 20 privileges. You can answer if you can. 21 THE WITNESS: I'm sorry. Repeat that 22 one.</p>	<p>163</p> <p>1 governments? 2 MS. KONKOLY: Objection insofar as this 3 calls for information protected by the law 4 enforcement privilege and potentially the state 5 secrets privilege. I am instructing the witness not 6 to answer. 7 MR. ABBAS: You are not going to -- wait 8 -- why -- can you read back the question? 9 (The record was read.) 10 MS. KONKOLY: And I will just clarify 11 that I should have said not insofar, but objection 12 that this information does call for information 13 protected by the law enforcement privilege and 14 potentially the state secrets privilege. And I am 15 instructing the witness not to answer. 16 BY MR. ABBAS: 17 Q. You testified that TSC sometimes 18 disseminates encounter information to foreign 19 governments, correct? 20 <b>A. I did.</b> 21 Q. Does -- how many foreign governments does 22 TSC disseminate encounter information to?</p>
<p>162</p> <p>1 BY MR. ABBAS: 2 Q. Does TSC disseminate TSS information to 3 foreign governments? 4 MS. KONKOLY: Same objections. 5 THE WITNESS: Disseminate TSS 6 information? So, in other words, encounter 7 information. 8 BY MR. ABBAS: 9 Q. Yes. 10 MS. KONKOLY: Same objections. 11 THE WITNESS: Sometimes. 12 BY MR. ABBAS: 13 Q. In what circumstances does TSC 14 disseminate encounter -- encounter information is 15 the preferred term? 16 <b>A. It is a little simpler, yes.</b> 17 Q. Sure. I will say encounter information. 18 And by encounter information, we are -- that's the 19 information that's contained in TSS, correct? 20 <b>A. Correct.</b> 21 Q. In what circumstances does TSC 22 disseminate encounter information to foreign</p>	<p>164</p> <p>1 MS. KONKOLY: Objection insofar as that 2 information is protected by the law enforcement 3 privilege or potentially the state secrets 4 privilege. Also, asked and answered. Also, I am 5 going to note that this line of questioning is not 6 clearly within the scope of the topics ordered by 7 the court. So I will allow it for now. We will see 8 where it goes. We may need to force that at some 9 point. 10 THE WITNESS: I don't think I can -- I 11 don't think I can answer that. 12 BY MR. ABBAS: 13 Q. Are there agreements between -- let me 14 start all over. Are there documents that govern how 15 TSC disseminates the encounter information to 16 foreign governments? 17 MS. KONKOLY: Objection. Insofar as that 18 calls for information protected by the law 19 enforcement or potentially the state secrets 20 privileges or SSI, also as to scope. You can answer 21 to the extent that you can. 22 MR. ABBAS: I mean, this is stuff in the</p>

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<p style="text-align: right;">165</p> <p>1 overview document. Encounter information is a  2 section of the overview document. I am asking about  3 encounter information, which is a section of the  4 overview document. Topic A is the content of the  5 overview document. I am asking about like literally  6 it's a section heading of the overview document.  7 MS. KONKOLY: Okay. My objections are on  8 the record and they stand. I told the witness he  9 can answer to the extent that he can.  10 THE WITNESS: Are there documents that  11 document what -- I am sorry. Can you just read it  12 back again?  13 BY MR. ABBAS:  14 Q. I will just say it again. Are there  15 documents that memorialize how TSC disseminates  16 encounter information to foreign governments?  17 MS. KONKOLY: Again, insofar as the  18 answer calls for information protected by the law  19 enforcement or the state secrets privilege.  20 Objection as to scope. You can answer if you can.  21 THE WITNESS: Yes.  22 MR. ABBAS: Arizona.</p>	<p style="text-align: right;">167</p> <p>1 common operating picture with respect to  2 counterterrorism. But beyond that, I don't think  3 there is anything else I can say.  4 BY MR. ABBAS:  5 Q. So TSC disseminates encounter information  6 to foreign governments to establish with those  7 foreign governments a common operating picture?  8 MS. KONKOLY: Objection.  9 Mischaracterized his prior testimony. Objection  10 insofar as the answer would call for law enforcement  11 privilege or state secrets potentially. You can  12 answer if you can.  13 THE WITNESS: Yes, I would say it's a  14 more limited picture. But beyond that, I can't say  15 anymore.  16 BY MR. ABBAS:  17 Q. What does TSC expect foreign governments  18 to do with information that TSC disseminates to  19 them?  20 MS. KONKOLY: Objection. Vague.  21 Objection. Insofar as that calls for information  22 protected by law enforcement or potential state</p>
<p style="text-align: right;">166</p> <p>1 BY MR. ABBAS:  2 Q. Does TSC know the number of countries --  3 I am sorry. Does TSC know the number of foreign  4 governments that receive encounter information from  5 TSC?  6 MS. KONKOLY: Objection insofar as the  7 answer calls for information protected by the law  8 enforcement or potentially the state secrets  9 privilege. Objection. Asked and answered.  10 Objection as to scope. You can answer if you can.  11 THE WITNESS: Yes.  12 MR. ABBAS: Indiana.  13 MR. ABBAS:  14 Q. Why does TSC disseminate encounter  15 information to foreign governments?  16 MS. KONKOLY: Objection. Calls for  17 speculation. Objection insofar as that answer calls  18 for information by the law enforcement or state  19 secrets privilege or information within the purview  20 of another agency. You can answer if you can.  21 THE WITNESS: I would just say generally  22 inasmuch it goes to our mission to establish a</p>	<p style="text-align: right;">168</p> <p>1 secrets. You can answer if you can.  2 THE WITNESS: Pursuant to HSPD-6, it is  3 to prevent terrorism.  4 MR. ABBAS: Can you read back the  5 question? I don't think you answered.  6 (The record was read.)  7 BY MR. ABBAS:  8 Q. What does TSC expect foreign governments  9 to do with the information that TSC disseminates to  10 them?  11 MS. KONKOLY: Objection. Asked and  12 answered. Same objections as stated previously.  13 THE WITNESS: To prevent terrorism.  14 BY MR. ABBAS:  15 Q. How does TSC expect foreign governments  16 to use information that TSC provides them to prevent  17 terrorism?  18 MS. KONKOLY: Objection. This  19 information would call for -- this answer would call  20 for information protected by the law enforcement and  21 potentially the state secrets privilege. I will  22 instruct you not to answer.</p>

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<p>169</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does TSC expect foreign governments to</p> <p>3 utilize information that TSC disseminates to them in</p> <p>4 their visa processes?</p> <p>5 MS. KONKOLY: Objection insofar as this</p> <p>6 question calls for information protected by the law</p> <p>7 enforcement or the state secrets privilege. I will</p> <p>8 -- you can answer if you can without waiving a</p> <p>9 privilege.</p> <p>10 THE WITNESS: I don't think I can.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. What information does TSC have about what</p> <p>13 foreign governments do with information those</p> <p>14 foreign governments receive from TSC?</p> <p>15 MS. KONKOLY: Objection. Asked and</p> <p>16 answered. Objection on the basis of the law</p> <p>17 enforcement and potentially the state secrets</p> <p>18 privilege. I am instructing the witness not to</p> <p>19 answer.</p> <p>20 MR. ABBAS: You are not going to allow</p> <p>21 the deponent to say anything? So they are just</p> <p>22 disseminating information, and they have no</p>	<p>171</p> <p>1 that that foreign government engages in human rights</p> <p>2 abuses?</p> <p>3 MS. KONKOLY: Objection insofar as that</p> <p>4 information -- that question calls for information</p> <p>5 protected by law enforcement or potentially the</p> <p>6 state secrets. You can answer if you can without</p> <p>7 waiving a privilege.</p> <p>8 THE WITNESS: Not that I am aware of.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Does TSC notify individuals that they</p> <p>11 have been nominated to be included in the TSDB?</p> <p>12 A. No.</p> <p>13 Q. Does TSC notify individuals that their</p> <p>14 nominations to the TSDB have been accepted by TSC?</p> <p>15 A. No.</p> <p>16 Q. Why? Why doesn't TSC notify individuals</p> <p>17 that they have been nominated no the TSDB?</p> <p>18 MS. KONKOLY: Objection insofar as that</p> <p>19 calls for information protected by the law</p> <p>20 enforcement privilege. You can answer if you can.</p> <p>21 THE WITNESS: Because doing so would be</p> <p>22 highly likely to run counter to the entire purpose</p>
<p>170</p> <p>1 knowledge, awareness about what. I mean, this is an</p> <p>2 overview document as well. There is an expectation</p> <p>3 that the foreign governments are going to use them</p> <p>4 for lawful screening purposes.</p> <p>5 MS. KONKOLY: That's been asked and</p> <p>6 answered. Insofar as you are asking anything</p> <p>7 further beyond that, my objections are on the record</p> <p>8 and they stand.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Does TSC expect foreign governments to</p> <p>11 utilize the information that TSC disseminates to</p> <p>12 those foreign governments?</p> <p>13 MS. KONKOLY: Objection. Asked and</p> <p>14 answered. Objection insofar as that question calls</p> <p>15 for information protected by the law enforcement or</p> <p>16 potentially state secrets. You can answer if you</p> <p>17 can.</p> <p>18 THE WITNESS: Yes, we expect them to use</p> <p>19 that information.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Has TSC ever stopped disseminating</p> <p>22 information to foreign governments after learning</p>	<p>172</p> <p>1 of having the TSDB.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Why?</p> <p>4 MS. KONKOLY: Objection insofar as that</p> <p>5 question calls for information protected by the law</p> <p>6 enforcement privilege. You can answer if you can.</p> <p>7 THE WITNESS: Because becoming aware of</p> <p>8 the investigative interest in an individual would be</p> <p>9 very likely to change their behavior to cause them</p> <p>10 to adopt countermeasures that would otherwise make</p> <p>11 counterterrorism efforts in effective.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Do people -- people on the No-Fly List</p> <p>14 learn that they are on the No-Fly List because they</p> <p>15 can't fly, correct?</p> <p>16 MS. KONKOLY: Objection. Calls for</p> <p>17 speculation.</p> <p>18 THE WITNESS: I would say not</p> <p>19 necessarily. There are potentially many reasons why</p> <p>20 somebody couldn't fly besides being on the No-Fly</p> <p>21 List.</p> <p>22 BY MR. ABBAS:</p>

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<p>173</p> <p>1 Q. What are the other reasons why a person</p> <p>2 could (sic) fly other than if they are on the No-Fly</p> <p>3 List?</p> <p>4 MS. KONKOLY: Objection insofar as that</p> <p>5 question calls for information protected by SSI.</p> <p>6 You can answer if you can.</p> <p>7 THE WITNESS: One example is an airline</p> <p>8 can deny a person boarding for any host of any</p> <p>9 number of reasons.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Is being on the No-Fly List a reason to</p> <p>12 be denied boarding?</p> <p>13 <b>A. Potentially it is. It is one of many.</b></p> <p>14 Q. Has the Terror Screening Center ever</p> <p>15 assessed whether individuals in the TSDB become</p> <p>16 aware of their listing via the dissemination and</p> <p>17 screening that's predicated on the dissemination of</p> <p>18 TSDB information?</p> <p>19 MS. KONKOLY: Objection insofar as that</p> <p>20 calls for information protected by the law</p> <p>21 enforcement privilege. You can answer to the extent</p> <p>22 you can. Also, vague.</p>	<p>175</p> <p>1 listee may infer from the operation of the TSDB that</p> <p>2 there is an investigative interest that regards</p> <p>3 them?</p> <p>4 MS. KONKOLY: Objection. Asked and</p> <p>5 answered. Objection. Calls for speculation and</p> <p>6 vague.</p> <p>7 THE WITNESS: It can happen.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does the disclosure of -- generally</p> <p>10 speaking, is it TSC's view that the disclosure of</p> <p>11 the government's investigative interest in a person</p> <p>12 is detrimental to national security?</p> <p>13 <b>A. It is -- it has to be balanced with the</b></p> <p>14 <b>mitigation to whatever other risks that that</b></p> <p>15 <b>individual may pose and whatever intelligence</b></p> <p>16 <b>benefit may come from that. So I think there are</b></p> <p>17 <b>two sides of that scale. In general, I would prefer</b></p> <p>18 <b>that people on the list not know they are on the</b></p> <p>19 <b>list, but there are other considerations.</b></p> <p>20 Q. Sure. And I understand that it is</p> <p>21 balancing. But I just want to hone in on the</p> <p>22 disclosure of investigative interest. All things</p>
<p>174</p> <p>1 THE WITNESS: We -- it's certainly</p> <p>2 something we pay attention to. It is hard to -- it</p> <p>3 is not like there is a flag in TSDB that goes up</p> <p>4 when that happens. But from an analytical</p> <p>5 perspective and anecdotal sometimes, that is a topic</p> <p>6 that will cause discussions at the Watch Listing</p> <p>7 Advisory Council. That's when I say they discuss</p> <p>8 what's legal, but also what's effective and what's</p> <p>9 practical. And we have to balance those things.</p> <p>10 Q. So there is an awareness among the watch</p> <p>11 listing agencies that when a person is placed in the</p> <p>12 TSDB, they may learn through the operation and</p> <p>13 dissemination of the TSDB that there is an</p> <p>14 investigative interest regarding them?</p> <p>15 MS. KONKOLY: Objection. Calls for</p> <p>16 speculation, vague. You can answer.</p> <p>17 THE WITNESS: Yeah, there is an awareness</p> <p>18 that, yeah, actions have effects, yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. So I just want to get a little more</p> <p>21 specific on the actions and effects. So TSC is</p> <p>22 aware that by including someone in the TSDB, the</p>	<p>176</p> <p>1 being equal, the TSC's testimony today is that an</p> <p>2 disclosure of investigative interest regarding a</p> <p>3 person is detrimental to national security?</p> <p>4 MS. KONKOLY: Objection.</p> <p>5 Mischaracterized his prior testimony. Objection.</p> <p>6 Vague.</p> <p>7 THE WITNESS: I go back to exactly my</p> <p>8 previous answer, which is it is detrimental as</p> <p>9 balanced by those other considerations.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does a person who satisfies the TSDB -- I</p> <p>12 am sorry. Does TSC have information regarding</p> <p>13 whether persons known to nominating agencies who</p> <p>14 those nominating agencies believe satisfy the TSDB</p> <p>15 inclusion standards are not ultimately nominated to</p> <p>16 be included in the FBI because of this balancing</p> <p>17 issue?</p> <p>18 MS. KONKOLY: Objection. Vague.</p> <p>19 Objection insofar as the answer would call for</p> <p>20 information protected by the law enforcement</p> <p>21 privilege. You can answer if you can.</p> <p>22 THE WITNESS: I am trying to think. I</p>

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<p style="text-align: right;">177</p> <p>1 may have to confer on the answer to that of whether 2 or not it is covered by the privilege. 3 MR. ABBAS: Do you want to do that? We 4 can step out for a few minutes. And just let us 5 know when you are done. 6 MS. KONKOLY: We could. I would like to 7 wait until one for the lunch break. 8 MR. ABBAS: On this I think I can finish 9 at one with this kind of line. 10 MS. KONKOLY: Okay. If you guys wouldn't 11 mind staying put and letting us step out. We'll 12 step out. 13 MR. ABBAS: Are you sure? 14 MS. KONKOLY: Yeah. 15 MR. ABBAS: It's up to you. We will be 16 ready whenever you are. 17 THE VIDEOGRAPHER: We are going off the 18 record. The time is 12:40 p.m. 19 (A brief recess was held.) 20 THE VIDEOGRAPHER: We are back on the 21 record. The time is 12:45 p.m. And we have been on 22 the record for 3 hours, 4 minutes, and 10 seconds.</p>	<p style="text-align: right;">179</p> <p>1 potentially state secrets. You can answer to the 2 extent that you can. 3 THE WITNESS: No. 4 BY MR. ABBAS: 5 Q. Who decided that TSC would not provide 6 notice to individuals who have been nominated to the 7 TSDB? 8 MS. KONKOLY: Objection. I am pretty 9 sure that's been asked and answered. Objection 10 insofar as it would implicate law enforcement or 11 state secrets-privileged information. You can 12 answer if you can. 13 THE WITNESS: I think even before the TSC 14 stood up, I think there was a general understanding 15 that that would be counterproductive. I don't know 16 if it was ever -- it hasn't been considered since I 17 have been there. And, certainly, when the TSC was 18 stood up, the decision at that point would have been 19 made not to do it because I don't think we ever 20 have. 21 Beyond that, I don't know. It is one of 22 those things that's so basic that I don't think has</p>
<p style="text-align: right;">178</p> <p>1 MS. KONKOLY: We had a pending question. 2 Could we read it back, please? 3 (The record was read.) 4 MS. KONKOLY: And I am objecting on the 5 basis of vagueness insofar as the answer would call 6 for information protected by the law enforcement or 7 potentially the state secrets privilege. But you 8 can answer to the extent that you can without 9 violating the privilege. 10 THE WITNESS: I have a -- there is an 11 expectation in the interagency community that 12 agencies that hold such information will nominate 13 those individuals. 14 BY MR. ABBAS: 15 Q. Does TSC have information that nominating 16 agencies on occasion do not nominate persons they 17 believe would satisfy the TSDB inclusion standards 18 because it may disclose to the potential listee an 19 investigative interest in them? 20 MS. KONKOLY: Objection. Vague. 21 Objection insofar as a complete answer would call 22 for information protected by the law enforcement or</p>	<p style="text-align: right;">180</p> <p>1 received a lot of debate. 2 MR. ABBAS: I am pretty sure that we are 3 at like a good stopping point right now. Can you 4 give us like two minutes to step out, and I think we 5 will just come back and adjourn for lunch. I know 6 it's a little bit early. But I am done with this 7 section. And we don't have time to really make a 8 meaningful dent into the next section. Does that 9 work? 10 THE VIDEOGRAPHER: We are going off the 11 record. The time is 12:49 p.m. 12 (A lunch recess was held.) 13 THE VIDEOGRAPHER: Here begins disk 14 number three in the videotaped deposition of Timothy 15 Paul Groh. The time on the video monitor is 1:54 16 p.m. We have been on the record for three hours and 17 eight minutes. And we are back on the record. 18 BY MR. ABBAS: 19 Q. Does TSC provide individuals nominated to 20 the TSDB the opportunity to rebut the derogatory 21 information that forms the basis of their nomination 22 to the TSDB?</p>

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<p>181</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 THE WITNESS: Individuals who feel that</p> <p>3 their travel has been somehow inhibited can apply</p> <p>4 through DHS TRIP for redress. And the complaints</p> <p>5 that are found through that to have a nexus to the</p> <p>6 TSDB are then forwarded to the TSDB. And that can</p> <p>7 include a rebuttal of derogatory information and any</p> <p>8 information the -- I guess, in that case, the</p> <p>9 complainant would like to provide.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. So my question is, is it time specific?</p> <p>12 So it is before the nomination happens -- before TSC</p> <p>13 accepts the nomination. So I am going to ask the</p> <p>14 question again. And I am inquiring about the</p> <p>15 pre-nomination process that TSC provides to nominees</p> <p>16 to the TSDB.</p> <p>17 Does TSD -- I'm sorry. Does TSC provide</p> <p>18 the opportunity to -- I am sorry. Let me start</p> <p>19 again. With regards to persons nominated to the</p> <p>20 TSDB, does TSC provide such persons the opportunity</p> <p>21 to provide information that rebuts the derogatory</p> <p>22 information that the nominating agency relies upon</p>	<p>183</p> <p>1 up. And I am going to cover a little more ground</p> <p>2 and I think a little ground we might have already</p> <p>3 covered just to establish a foundation. Does TSC</p> <p>4 notify individuals who have been nominated to the</p> <p>5 TSDB?</p> <p>6 <b>A. I think we covered that earlier. The</b></p> <p>7 <b>answer is no.</b></p> <p>8 Q. Does TSC provide individuals who have</p> <p>9 been nominated to the TSDB with the opportunity to</p> <p>10 provide TSC information that rebuts the nominating</p> <p>11 agency's derogatory information that has been</p> <p>12 included in the TSDB nomination?</p> <p>13 MS. KONKOLY: Objection. Vague. Asked</p> <p>14 and answered.</p> <p>15 THE WITNESS: TSDB does not or the TSC</p> <p>16 does not.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. The TSC does not what? That's fine. No,</p> <p>19 never mind. That's clear. Okay. All right. So we</p> <p>20 are going to talk about dissemination probably for a</p> <p>21 while. Does TSC know the name of every individual</p> <p>22 that has access to TSDB information?</p>
<p>182</p> <p>1 for that person's nomination?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 THE WITNESS: If somebody wanted to rebut</p> <p>4 the derogatory information, they could provide that</p> <p>5 information to the nominator. And the nominator</p> <p>6 would be expected to give exculpatory information as</p> <p>7 well as derogatory information as part of that</p> <p>8 nomination process. And it would be something that</p> <p>9 we would consider.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Does TSC provide the prospective nominee</p> <p>12 with the opportunity to rebut the derogatory</p> <p>13 information that a nominating agency is relying upon</p> <p>14 as the basis of their nomination of that person?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 THE WITNESS: Isn't that the exact same</p> <p>17 question you just asked me?</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. No.</p> <p>20 <b>A. How is it different?</b></p> <p>21 Q. So it is not a clear question. We agree</p> <p>22 with that. Let me try again. So I think let's back</p>	<p>184</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Potentially calls for law enforcement</p> <p>3 sensitive information. You can answer to the extent</p> <p>4 that you can.</p> <p>5 THE WITNESS: So I assume from your</p> <p>6 question you don't mean access to the TSDB itself</p> <p>7 because you said TSDB information.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. So, you know, I am being honest. I don't</p> <p>10 really know, you know. But you know, I don't know</p> <p>11 how you disseminate it. So I am asking kind of the</p> <p>12 --</p> <p>13 <b>A. Thus, I am trying to clarify.</b></p> <p>14 Q. Yeah. So TSDB information is any kind of</p> <p>15 part of the TSDB. Any information regarding TSDB.</p> <p>16 That's what I mean by TSDB information. So let me</p> <p>17 try with that kind of caveat in mind. Does TSC know</p> <p>18 the name of all persons who have any type of access</p> <p>19 to TSDB information?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 Objection insofar as it calls for law</p> <p>22 enforcement-protected information. You can answer</p>



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<p>185</p> <p>1 if you can.</p> <p>2 THE WITNESS: So assuming, as I take your</p> <p>3 question, that you mean any information that is</p> <p>4 exported from TSDB to partner systems, no. The TSC</p> <p>5 does not know the name of every individual that</p> <p>6 would then have access to information in those</p> <p>7 downstream systems.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does TSC know the number of persons who</p> <p>10 have access of any kind to TSDB information?</p> <p>11 MS. KONKOLY: Objection. Vague.</p> <p>12 Objection insofar as the answer would call for law</p> <p>13 enforcement-privileged information. You can answer</p> <p>14 if you can.</p> <p>15 THE WITNESS: Certainly not a precise</p> <p>16 number.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Does TSC have an estimate of how many</p> <p>19 persons have access to TSDB -- access -- I am sorry.</p> <p>20 Let me start again. Does TSC have an estimate of</p> <p>21 how many persons have access of any kind to TSDB</p> <p>22 information?</p>	<p>187</p> <p>1 particular effort to sit down and do that, no.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Are there -- does TSC possess any</p> <p>4 documents that regard how many persons have access</p> <p>5 of any kind to TSDB information?</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 Objection insofar as the answer would call for law</p> <p>8 enforcement-privileged information. You can answer</p> <p>9 if you can.</p> <p>10 THE WITNESS: So we know who we export</p> <p>11 our information to. And we know for what purpose.</p> <p>12 But I don't, for instance, know how many employees</p> <p>13 at the Department of Homeland Security have access</p> <p>14 to one of their systems that may have our</p> <p>15 information or the total number of police officers</p> <p>16 in the United States have access to NCIC, et cetera,</p> <p>17 et cetera.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Do tens of thousands of individuals have</p> <p>20 access to TSDB information?</p> <p>21 MS. KONKOLY: Objection. Vague.</p> <p>22 Objection insofar as the answer would call for law</p>
<p>186</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection insofar as the answer calls for law</p> <p>3 enforcement-privileged information. You can answer</p> <p>4 if you can.</p> <p>5 THE WITNESS: I am not aware of a</p> <p>6 specific estimate. One may have been done in the</p> <p>7 past. I don't know.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Has TSC estimated the number of</p> <p>10 individuals who have access of any kind to TSDB</p> <p>11 information?</p> <p>12 MS. KONKOLY: Objection. Vague.</p> <p>13 THE WITNESS: Yeah, I think it was the</p> <p>14 same question. No.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. TSC has never done an estimate of -- has</p> <p>17 never ventured a guess as to how many persons have</p> <p>18 access of any kind to TSDB information?</p> <p>19 MS. KONKOLY: Objection. Vague and</p> <p>20 objection as to scope. Protective order. You can</p> <p>21 answer if you can.</p> <p>22 THE WITNESS: I am not aware of a</p>	<p>188</p> <p>1 enforcement-privileged information. You can answer</p> <p>2 if you can.</p> <p>3 THE WITNESS: I think that's likely.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Do hundreds of thousands of individuals</p> <p>6 have access to TSDB information?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 Objection insofar as the answer would call for law</p> <p>9 enforcement-privileged information. You can answer</p> <p>10 if you can.</p> <p>11 THE WITNESS: I believe that the total</p> <p>12 number of police officers in the United States</p> <p>13 exceeds 100,000.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. And each police officer through NCIC</p> <p>16 would have access to TSDB information, correct?</p> <p>17 MS. KONKOLY: Objection.</p> <p>18 Mischaracterized his prior testimony.</p> <p>19 MR. ABBAS: I haven't asked him any</p> <p>20 questions about NCIC yet.</p> <p>21 THE WITNESS: In many or most cases they</p> <p>22 will. I can't speak to every department's policies</p>

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<p>189</p> <p>1 as to who has access to what.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. Is it TSC's testimony today that hundreds</p> <p>4 of thousands of individuals have access to TSDB</p> <p>5 information?</p> <p>6 MS. KONKOLY: Objection.</p> <p>7 Mischaracterized his prior testimony. Objection.</p> <p>8 Vague.</p> <p>9 THE WITNESS: My testimony is there are</p> <p>10 hundreds of thousands of law enforcement officers in</p> <p>11 the United States. And most of them likely have</p> <p>12 access to TSDB information through NCIC.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. So, I mean, if you don't think that</p> <p>15 hundreds of thousands of individuals have access to</p> <p>16 TSDB information, you can just say that they don't</p> <p>17 have access, that it is not hundreds of thousands.</p> <p>18 If you do believe that hundreds of thousands of</p> <p>19 individuals have access to TSDB information, then</p> <p>20 you are not answering the question.</p> <p>21 So do hundreds of -- are -- is it TSC's</p> <p>22 testimony that more than 100,000 individuals inside</p>	<p>191</p> <p>1 Q. Physically located outside the United</p> <p>2 States?</p> <p>3 MS. KONKOLY: Same objections.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. So including foreigners and I am sure</p> <p>6 embassies and consulates.</p> <p>7 <b>A. Yeah, I don't think I can answer that.</b></p> <p>8 MS. KONKOLY: Same objections.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. How many persons -- let's start all over.</p> <p>11 Does TSC know how many persons associated with</p> <p>12 foreign governments have access to TSDB information?</p> <p>13 MS. KONKOLY: Objection. Calls for</p> <p>14 speculation. Objection. Vague. Objection insofar</p> <p>15 as the answer would call for information protected</p> <p>16 by the law enforcement privilege. You can answer if</p> <p>17 you can.</p> <p>18 THE WITNESS: The way the systems --</p> <p>19 yeah, I don't know -- I do not know that number.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Does TSC know that number?</p> <p>22 <b>A. I don't believe so.</b></p>
<p>190</p> <p>1 the United States have access to TSDB information?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 Objection. Asked and answered. Objection.</p> <p>4 Calls --</p> <p>5 THE WITNESS: So I am trying to express</p> <p>6 how I come to that conclusion. So based on the</p> <p>7 number of police officers, I think it is likely that</p> <p>8 more than a 100,000 people in the United States have</p> <p>9 access to TSDB information.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. How many people outside the United States</p> <p>12 have access to TSDB information?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Calls for speculation. And objection</p> <p>15 insofar as the answer would call for information</p> <p>16 protected by the law enforcement privilege. You can</p> <p>17 answer if you can.</p> <p>18 THE WITNESS: First of all, let me</p> <p>19 clarify. When you say people outside the United</p> <p>20 States, do you mean physically located outside the</p> <p>21 United States or do you mean foreigners?</p> <p>22 BY MR. ABBAS:</p>	<p>192</p> <p>1 Q. Does TSC have an estimate of the number</p> <p>2 of persons associated with foreign governments that</p> <p>3 have access to TSDB information?</p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 Objection. Calls for speculation. Objection</p> <p>6 insofar as the answer would implicate information</p> <p>7 protected by the law enforcement privilege. You can</p> <p>8 answer to the extent you can.</p> <p>9 THE WITNESS: I am sorry. Can you repeat</p> <p>10 that one?</p> <p>11 (The record was read.)</p> <p>12 MS. KONKOLY: Same objections.</p> <p>13 THE WITNESS: Not that I am aware of.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Does TSC exercise any control over the</p> <p>16 number of persons that have access to TSDB</p> <p>17 information?</p> <p>18 MS. KONKOLY: Objection. Vague.</p> <p>19 Objection. Calls for speculation. Objection</p> <p>20 insofar as the answer would call for information</p> <p>21 protected by the law enforcement privilege. You can</p> <p>22 answer if you can.</p>

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<p>193</p> <p>1 THE WITNESS: What do you mean by</p> <p>2 control?</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Let me just do the question again. Does</p> <p>5 TSC determine in any way the number of individuals</p> <p>6 who have access to TSDB information?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 Objection insofar as the answer would call for</p> <p>9 information protected by law enforcement privilege.</p> <p>10 You can answer to the extent that you can.</p> <p>11 THE WITNESS: I am sorry. One more time</p> <p>12 on that particular question.</p> <p>13 MR. ABBAS: Can you read it back?</p> <p>14 (The record was read.)</p> <p>15 MS. KONKOLY: Same objections.</p> <p>16 THE WITNESS: No, TSC does not control</p> <p>17 the number of individuals with foreign governments;</p> <p>18 the same as we don't control the number of</p> <p>19 individuals domestically.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Does TSC establish the process by which</p> <p>22 recipients of TSDB information make available the</p>	<p>195</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Let's -- so I will get back to the</p> <p>3 foreign governments. I know there is some privilege</p> <p>4 issues with the foreign governments. But with</p> <p>5 regards to -- let's just talk about with regards to</p> <p>6 domestic, non-Federal Government entities. Okay.</p> <p>7 So with regards to domestic, non-Federal Government</p> <p>8 entities who receive from TSC TSDB information, does</p> <p>9 TSC require such domestic, non-Federal Government</p> <p>10 entities to adhere to any standards regarding who</p> <p>11 those non-Federal Government domestic entities grant</p> <p>12 access to?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Misleading and compound. Objection</p> <p>15 insofar as the answer would call for information</p> <p>16 protected by law enforcement privilege. You can</p> <p>17 answer to the extent that you can.</p> <p>18 THE WITNESS: So the TSC doesn't export</p> <p>19 any non-Federal Government entities any TSDB</p> <p>20 information with the exception of the aforementioned</p> <p>21 foreign partners.</p> <p>22 BY MR. ABBAS:</p>
<p>194</p> <p>1 information they receive from TSC to persons?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 Objection insofar as the answer would call for</p> <p>4 information protected by the law enforcement</p> <p>5 privilege. You can answer if you can.</p> <p>6 THE WITNESS: I am not sure what you mean</p> <p>7 by make available to --</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Let me try again. Does TSC -- does TSC</p> <p>10 establish -- I am sorry. Does TSC require</p> <p>11 recipients of TSDB information to adhere to</p> <p>12 standards regarding who recipients of TSDB</p> <p>13 information allow access in any way to TSDB the</p> <p>14 information?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection insofar as the answer would call for</p> <p>17 information protected by the law enforcement</p> <p>18 privilege. You can answer to the extent you can.</p> <p>19 THE WITNESS: The individual agreements</p> <p>20 with individual countries would govern generally how</p> <p>21 they -- what the understanding is between the two</p> <p>22 governments as to the use of that information.</p>	<p>196</p> <p>1 Q. Doesn't TSC make TSDB information</p> <p>2 accessible to state and local authorities, colleges,</p> <p>3 universities, travel authorities?</p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 Objection. Compound. Objection insofar as the</p> <p>6 answer would call for information protected by the</p> <p>7 law enforcement privilege. You can answer to the</p> <p>8 extent you can.</p> <p>9 THE WITNESS: No. The TSC exports to the</p> <p>10 FBI through to the National Crime Information</p> <p>11 Center.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. And so the National Crime information</p> <p>14 Center is the FBI?</p> <p>15 <b>A. It is part of the FBI.</b></p> <p>16 Q. The FBI controls the National Crime</p> <p>17 Information Center?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. And who told TSC to export TSDB</p> <p>20 information to the National Crime Information</p> <p>21 Center?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>

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<p style="text-align: right;">197</p> <p>1 Objection. Calls for a legal conclusion insofar as  2 -- also, objection insofar as the answer would call  3 for information protected by the law enforcement  4 privilege. You can answer to the extent that you  5 can.  6 THE WITNESS: It would be governed by the  7 Watch Listing Advisory Council as we discussed -- as  8 we discussed earlier.  9 BY MR. ABBAS:  10 Q. Does TSC know which entities have access  11 to the NCIC?  12 MS. KONKOLY: Objection insofar as the  13 information -- the answer would call for information  14 protected by the law enforcement privilege. You can  15 answer to the extent that you can.  16 THE WITNESS: Certainly, NCIC knows who  17 they then export to. But the TSC does not have  18 direct knowledge of that.  19 BY MR. ABBAS:  20 Q. Does TSC have access to NCIC?  21 <b>A. TSC has access to NCIC via the State of</b>  22 <b>Virginia, who then receives it from the Criminal</b></p>	<p style="text-align: right;">199</p> <p><b>1 within a state or territory receive NCIC through</b>  <b>2 that state or territorial -- I forget what the term</b>  <b>3 is -- NCIC bureau or something along those lines.</b>  4 BY MR. ABBAS:  5 Q. So there is like a single point of  6 contact for NCIC information per state?  7 <b>A. Yes.</b>  8 Q. Okay. And territories?  9 <b>A. Yes.</b>  10 Q. Okay. Which Federal Government entities  11 -- I am sorry. TSC provides -- I am sorry. Let me  12 start over. TSC exports TSDB information in a  13 variety of different ways to recipients of TSDB  14 information, correct?  15 <b>A. Yes.</b>  16 Q. Are there a fixed number of ways that TSC  17 provides TSDB information to entities that receive  18 TSDB information?  19 MS. KONKOLY: Objection. Vague.  20 Objection insofar as the answer would call for  21 information protected by the law enforcement  22 privilege. You can answer to the extent you can.</p>
<p style="text-align: right;">198</p> <p><b>1 Justice Information System's division, CJIS, which</b>  <b>2 runs NCIC.</b>  3 Q. So the Terror Screening Center has access  4 to the NCIC because Virginia has access to the NCIC?  5 <b>A. Yes.</b>  6 Q. Why is that the arrangement?  7 MS. KONKOLY: Objection insofar as the  8 answer would call for --  9 BY MR. ABBAS:  10 Q. Let me withdraw it. Why doesn't the  11 Terror Screening Center get access to the NCIC  12 directly from the FBI?  13 MS. KONKOLY: Objection. Vague.  14 Objection insofar as the answer would call for  15 information protected by the law enforcement  16 privilege. You can answer to the extent you can.  17 THE WITNESS: I honestly don't know why  18 the system was set up that particular way. It is  19 true nationwide.  20 BY MR. ABBAS:  21 Q. What's true nationwide?  22 <b>A. The entities geographically located</b></p>	<p style="text-align: right;">200</p> <p>THE WITNESS: I think each individual  2 export is -- each system is unique in some way. So  3 I think they are all different.  4 BY MR. ABBAS:  5 Q. Which Federal Government entities have  6 real-time access to TSDB information?  7 MS. KONKOLY: Objection insofar as the  8 answer would call for information protected by the  9 law enforcement privilege. You can answer to the  10 extent you can.  11 THE WITNESS: So, generally, the  12 Department of Homeland Security, the State  13 Department we have already talked about; the FBI,  14 including NCIC. I think that covers -- I think that  15 covers most of them. Of course, there are  16 subcomponents to some of those.  17 BY MR. ABBAS:  18 Q. To DHS?  19 <b>A. Including DHS.</b>  20 Q. Does USCIS have real-time access to TSDB  21 information?  22 MS. KONKOLY: Objection insofar as the</p>

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<p style="text-align: right;">201</p> <p>1 answer would call for information protected by the</p> <p>2 law enforcement privilege. You can answer to the</p> <p>3 extent that you can.</p> <p>4 THE WITNESS: I believe so.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does CBP have real-time access to TSDB</p> <p>7 information?</p> <p>8 MS. KONKOLY: Objection insofar as the</p> <p>9 answer would call for information protected by the</p> <p>10 law enforcement privilege. You can answer to the</p> <p>11 extent You can.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Does TSC -- I am sorry. Does TSA have</p> <p>15 real-time access to TSDB information?</p> <p>16 MS. KONKOLY: Objection --</p> <p>17 THE WITNESS: Yes.</p> <p>18 MS. KONKOLY: -- insofar as the answer</p> <p>19 would call for information protected by either the</p> <p>20 law enforcement privilege or SSI. You can answer to</p> <p>21 the extent that you can.</p> <p>22 THE WITNESS: Yes.</p>	<p style="text-align: right;">203</p> <p>1 instantaneously have access to the changes that TSC</p> <p>2 makes to TSDB information?</p> <p>3 MS. KONKOLY: Objection. That's not a</p> <p>4 question.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Is that correct. That's the question.</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 answer to that question would call for information</p> <p>9 protected by the law enforcement privilege. You can</p> <p>10 answer to the extent that you can.</p> <p>11 THE WITNESS: Yes, that's correct. Some</p> <p>12 U.S. Government agencies have what we would call</p> <p>13 transactional -- it is updated transactionally. We</p> <p>14 make a change in the TSDB. And it is reflected in</p> <p>15 their system in a matter of seconds or maybe</p> <p>16 minutes.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Got it. What do you call that type of</p> <p>19 access?</p> <p>20 <b>A. I say that systems are updated</b></p> <p>21 <b>transactionally, but I don't -- I don't have a word</b></p> <p>22 <b>associated with the access for that. It is a</b></p>
<p style="text-align: right;">202</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Do any foreign government have real-time</p> <p>3 access to TSDB information?</p> <p>4 MS. KONKOLY: Objection insofar as the</p> <p>5 answer would call for information protected by</p> <p>6 either the law enforcement privilege or the state</p> <p>7 secrets privilege. You can answer to the extent</p> <p>8 that you can.</p> <p>9 THE WITNESS: Define for me in the case</p> <p>10 what you mean by real-time access.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Maybe it is time to kind of talk about</p> <p>13 that. Some Federal Government agencies have access</p> <p>14 to -- the TSDB is always changing, correct?</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. While we have been doing this deposition,</p> <p>17 it has changed?</p> <p>18 <b>A. It is likely true.</b></p> <p>19 Q. And it will change tomorrow and the day</p> <p>20 after and it changes everyday, correct?</p> <p>21 <b>A. That's correct.</b></p> <p>22 Q. My understanding is that some agencies</p>	<p style="text-align: right;">204</p> <p>1 <b>transactional update.</b></p> <p>2 Q. So some agencies have like ongoing</p> <p>3 continuously updated access to TSDB information,</p> <p>4 correct?</p> <p>5 <b>A. That's correct.</b></p> <p>6 Q. Does the Department of State have ongoing</p> <p>7 access to the updates that get made to TSDB</p> <p>8 information?</p> <p>9 MS. KONKOLY: Objection insofar as the</p> <p>10 answer calls for information protected by the law</p> <p>11 enforcement privilege. You can answer to the extent</p> <p>12 you can.</p> <p>13 THE WITNESS: I believe the Department of</p> <p>14 State's system updates transactionally.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. And by transactionally you mean that the</p> <p>17 Department of State receives updates about changes</p> <p>18 to the TSDB in close to real time?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Do U.S. consulates and embassies receive</p> <p>21 access -- I am sorry. Do -- does the TSC provide</p> <p>22 consulates and embassies with real-time access to</p>

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<p style="text-align: right;">205</p> <p>1 changes made to the TSDB?</p> <p>2 MS. KONKOLY: Objection insofar as the</p> <p>3 answer calls for information protected by the law</p> <p>4 enforcement. You can answer to the extent you can.</p> <p>5 THE WITNESS: I honestly don't know. I</p> <p>6 know what we give to big State Department. What</p> <p>7 they do downstream with that, I don't know.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Is it up to them what they do with the</p> <p>10 real-time access that you provide to the Department</p> <p>11 of State?</p> <p>12 MS. KONKOLY: Objection. Vague.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. I am sorry. Let me be a little more</p> <p>15 clearer. Does -- is it up to the Department of</p> <p>16 State what access they provide to the near real-time</p> <p>17 updates that TSC makes available to the Department</p> <p>18 of State?</p> <p>19 MS. KONKOLY: Objection. Vague.</p> <p>20 Objection insofar as the answer calls for</p> <p>21 information protected by the law enforcement</p> <p>22 privilege. You can answer to the extent you can.</p>	<p style="text-align: right;">207</p> <p>1 want.</p> <p>2 THE WITNESS: No, I think it is not -- we</p> <p>3 don't export information to the United Nations.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Does TSC export any TSDB information to</p> <p>6 any United Nations-affiliated agencies?</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 answer would call for information protected by the</p> <p>9 law enforcement privilege. You can answer to the</p> <p>10 extent that you can. Also, vague.</p> <p>11 THE WITNESS: Yeah. How do you define</p> <p>12 the United Nations-associated agency.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. We will put a little -- we will come back</p> <p>15 to it. Does TSC disseminate TSDB information to the</p> <p>16 UN Refugee agency?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 information would call for -- I'm sorry -- insofar</p> <p>19 as the answer would call for information protected</p> <p>20 by the law enforcement privilege. You can answer to</p> <p>21 the extent that you can.</p> <p>22 THE WITNESS: No.</p>
<p style="text-align: right;">206</p> <p>1 THE WITNESS: Yes. The State Department</p> <p>2 would discern what their internal access rules look</p> <p>3 like and how often remote foreign post systems are</p> <p>4 updated, so yes.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does TSC know -- well, first, does TSC</p> <p>7 provide near real-time access to TSDB updates to the</p> <p>8 United Nations?</p> <p>9 MS. KONKOLY: Objection insofar as the --</p> <p>10 objection that that question calls for information</p> <p>11 protected by the law enforcement privilege. And I</p> <p>12 am going to instruct the witness not to answer. I</p> <p>13 will revise that. I will say if you feel you can</p> <p>14 answer without waiving a privilege, you can answer</p> <p>15 that.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Let me try making it --</p> <p>18 <b>A. So I think I can -- well --</b></p> <p>19 MR. ABBAS: Do you want to confer? We</p> <p>20 can leave.</p> <p>21 MS. KONKOLY: Do you want to confer or --</p> <p>22 MR. ABBAS: We can just step out if you</p>	<p style="text-align: right;">208</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does TSC have any information about</p> <p>3 whether or not the UN refugee agency has any type of</p> <p>4 access to TSDB information?</p> <p>5 MS. KONKOLY: Objection insofar as the</p> <p>6 answer would call for information protected by the</p> <p>7 law enforcement privilege. You can answer to the</p> <p>8 extent that you can.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Is TSC able to testify today that the UN</p> <p>12 refugee agency has no access at all to TSDB</p> <p>13 information?</p> <p>14 MS. KONKOLY: Objection insofar as the</p> <p>15 answer would call for information protected by the</p> <p>16 law enforcement privilege. Objection. Vague.</p> <p>17 Objection. Mischaracterizes prior testimony. You</p> <p>18 can answer to the extent that you can.</p> <p>19 THE WITNESS: Not that I am aware of.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. So is it possible that the UN refugee</p> <p>22 agency has some type of access to the TSDB?</p>

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<p style="text-align: right;">209</p> <p>1 MS. KONKOLY: Objection insofar as the</p> <p>2 answer calls for information protected the law</p> <p>3 enforcement privilege. Objection. Calls for</p> <p>4 speculation. Objection. Vague.</p> <p>5 THE WITNESS: I can't testify to what I</p> <p>6 don't have any insight or awareness into. We export</p> <p>7 our information. And, you know, I have no reason to</p> <p>8 believe that they have access to that information.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. But you don't know what other people --</p> <p>11 but TSC does not know how recipients of TSDB</p> <p>12 information further disseminate TSDB information,</p> <p>13 correct?</p> <p>14 MS. KONKOLY: Objection. Misleading.</p> <p>15 Objection. Mischaracterizes prior testimony.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. All right. Fine. I will withdraw. Does</p> <p>18 TSC know how recipients of TSDB information</p> <p>19 disseminate the TSDB information those entities</p> <p>20 receive?</p> <p>21 MS. KONKOLY: Objection. Vague,</p> <p>22 compound. Objection insofar as it calls for</p>	<p style="text-align: right;">211</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. I am going to withdraw the question.</p> <p>3 Does TSC know the names of all of the entities that</p> <p>4 receive TSDB information globally?</p> <p>5 MS. KONKOLY: Objection. Asked and</p> <p>6 answered. Objection insofar as the answer would</p> <p>7 call for information protected by the law</p> <p>8 enforcement privilege. You can answer to the extent</p> <p>9 you can.</p> <p>10 THE WITNESS: We know who we share the</p> <p>11 information with. And we know what the agreement</p> <p>12 governing further dissemination of that information</p> <p>13 with that entity is.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Does TSC -- has it ever happened where a</p> <p>16 recipient of TSDB information has not followed its</p> <p>17 agreement with TSC about the use of TSDB</p> <p>18 information?</p> <p>19 MS. KONKOLY: Objection as to scope.</p> <p>20 Objection insofar as the answer would call for</p> <p>21 information protected by the law enforcement</p> <p>22 privilege. You can answer to the extent you know</p>
<p style="text-align: right;">210</p> <p>1 information protected by enforcement privilege. You</p> <p>2 can answer to the extent that you can.</p> <p>3 THE WITNESS: The TSC knows what was</p> <p>4 agreed upon with any partner, whether it is foreign</p> <p>5 or domestic. And certainly based on our</p> <p>6 relationship with the intelligence community, I</p> <p>7 think there's a good chance that if somebody were</p> <p>8 doing so that we would know.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. What do you mean by there is a good</p> <p>11 chance? Elaborate on what you mean there.</p> <p>12 MS. KONKOLY: I am going to object that</p> <p>13 that answer calls for information protected by the</p> <p>14 law enforcement privilege and instruct the witness</p> <p>15 not to answer that one.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Can TSC definitively state which entities</p> <p>18 receive TSDB information?</p> <p>19 MS. KONKOLY: Objection. Asked and</p> <p>20 answered. Objection insofar as the answer would</p> <p>21 call for information protected by law enforcement</p> <p>22 privilege. You can answer.</p>	<p style="text-align: right;">212</p> <p>1 and can do so without waiving the privilege.</p> <p>2 THE WITNESS: I know of in my tenure one</p> <p>3 instance where we became aware of an improper</p> <p>4 disclosure. We referred that to the partner agency.</p> <p>5 And I believe that they have opened an investigation</p> <p>6 into how that happened.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. The incident that you are referring to,</p> <p>9 was it the improper disclosure of like a single</p> <p>10 person's identity in the TSDB?</p> <p>11 A. Yes.</p> <p>12 Q. Which agency was that incident -- which</p> <p>13 agency did that incident regard?</p> <p>14 MS. KONKOLY: Objection insofar as that</p> <p>15 would call for the law enforcement information</p> <p>16 protected by law enforcement privilege. You can</p> <p>17 answer to the extent that you can.</p> <p>18 THE WITNESS: I don't believe I can say</p> <p>19 without -- there is an ongoing investigation.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. When was the -- so the incident that you</p> <p>22 are describing was a misuse of TSDB information in</p>

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<p>213</p> <p>1 TSDB's view, correct?</p> <p>2 <b>A. Yes. It was an improper disclosure.</b></p> <p>3 Q. Who made the improper disclosure of TSDB</p> <p>4 information?</p> <p>5 MS. KONKOLY: Objection.</p> <p>6 MR. ABBAS: I don't need their name.</p> <p>7 Their title, their agency affiliation would be just</p> <p>8 fine.</p> <p>9 MS. KONKOLY: Objection insofar as the</p> <p>10 answer calls for information protected by the law</p> <p>11 privilege, which based on the witness' prior answer</p> <p>12 appears to be the case. However, I will allow an</p> <p>13 answer if there's --</p> <p>14 THE WITNESS: That's thus the</p> <p>15 investigation so I don't know. That's why there is</p> <p>16 an ongoing investigation.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. When did this incident occur?</p> <p>19 MS. KONKOLY: Objection insofar as the</p> <p>20 answer would call for information protected by the</p> <p>21 law enforcement privilege. You can answer if you</p> <p>22 can.</p>	<p>215</p> <p>1 call for law enforcement-protected information. You</p> <p>2 can answer if you can.</p> <p>3 THE WITNESS: Not that I am aware of.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. What measures does the TSC take to ensure</p> <p>6 that recipient -- let me start over. What measures</p> <p>7 does TSC take to ensure that entities who receive</p> <p>8 TSDB information comply with the terms of their</p> <p>9 agreements regarding further dissemination of that</p> <p>10 TSDB information?</p> <p>11 MS. KONKOLY: Objection. Vague and</p> <p>12 compound. Further objection insofar as the answer</p> <p>13 would call for information protected by the law</p> <p>14 enforcement privilege. You can answer if you can.</p> <p>15 THE WITNESS: So through the nominations</p> <p>16 and encounter process if we become aware as we have</p> <p>17 contact with these agencies of something that does</p> <p>18 not seem to be according to our agreement, then that</p> <p>19 would cause us to make inquiry with that</p> <p>20 organization.</p> <p>21 So we have in some cases daily --</p> <p>22 multiple times daily contact with many, although I</p>
<p>214</p> <p>1 <b>A. Within the last several months. I don't</b></p> <p>2 <b>know precisely.</b></p> <p>3 Q. Has there -- in the history of the TSDB</p> <p>4 other than this incident that occurred in the last</p> <p>5 several months, is TSC aware of any other use of</p> <p>6 TSDB information that is inconsistent with any</p> <p>7 agreements regarding the use of TSDB information?</p> <p>8 MS. KONKOLY: Objection as to the scope</p> <p>9 of that question not being within the approved</p> <p>10 topics for this deposition. Objection further to</p> <p>11 the extent the answer would call for information</p> <p>12 within the law enforcement privilege. You can</p> <p>13 answer if you can.</p> <p>14 THE WITNESS: I am not aware of</p> <p>15 additional examples.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. So there has only been one instance in</p> <p>18 the history of the TSDB that TSC is aware of where</p> <p>19 there has been an improper use of TSDB information?</p> <p>20 MS. KONKOLY: Objection. Asked and</p> <p>21 answered. Objection again as to scope and objection</p> <p>22 as to whether -- to the extent that answer would</p>	<p>216</p> <p>1 wouldn't say all, of the downstream or the watch</p> <p>2 listing nominators. So that provides -- that</p> <p>3 provides some level of understanding. There is also</p> <p>4 -- electronically between systems, there is a</p> <p>5 reconciliation that is a technical thing to make</p> <p>6 sure that our databases are synched, that the</p> <p>7 information in their database reflects what it</p> <p>8 should from what is in ours.</p> <p>9 And beyond that, there is oversight over</p> <p>10 this entire process on the part of inspectors</p> <p>11 general, the General Accounting Office, the Privacy</p> <p>12 and Civil Liberties Oversight Board. There are</p> <p>13 often audits that are conducted across the watch</p> <p>14 listing enterprise not restricted to any one</p> <p>15 organization. And they have an oversight function</p> <p>16 to ensure that the entire system from beginning to</p> <p>17 end is functioning as agreed and as is appropriate.</p> <p>18 Q. Has TSC ever taken any actions to enforce</p> <p>19 the terms of its agreements with entities that</p> <p>20 receive TSDB information who are violating their</p> <p>21 agreements with TSC?</p> <p>22 MS. KONKOLY: Objection. Vague and</p>



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<p style="text-align: right;">217</p> <p>1 compound. Objection insofar as the information 2 calls -- I'm sorry -- as the answer calls for 3 information protected by the law enforcement 4 privilege. You can answer to the extent that you 5 can.</p> <p>6 THE WITNESS: I think violations is a 7 very strong word. I think that this is a complex 8 process. And as we see here in this deposition, 9 terms are important and often misunderstood and 10 clarification is required. So I think there is 11 constant ongoing clarification, discussion, 12 adjusting to changing circumstances that goes on 13 across the entire enterprise. I am not aware of 14 something where I believe it would constitute a 15 violation of an intentional misuse of TSDB data.</p> <p>16 BY MR. ABBAS: 17 Q. So the Terror Screening Center is not 18 aware of a single instance in which an agency has 19 misused TSDB information?</p> <p>20 MS. KONKOLY: Objection. 21 Mischaracterized his prior testimony. Objection 22 insofar as the answer would call for information</p>	<p style="text-align: right;">219</p> <p>1 Listing Advisory Council and go through the 2 aforementioned process to reconcile that.</p> <p>3 BY MR. ABBAS: 4 Q. And, ultimately, if there is a dispute, 5 the National Security Council resolves that?</p> <p>6 A. That's correct. 7 Q. And the National Security Council has 8 never resolved a dispute regarding -- I am sorry, 9 let me ask that question. Has the National Security 10 Council ever resolved a dispute regarding the use of 11 TSDB information?</p> <p>12 MS. KONKOLY: Objection. Vague. 13 Objection as to scope. Objection insofar as the 14 answer would call for information protected by the 15 law enforcement privilege. You can answer to the 16 extent you know and can do so without waiving any 17 privilege.</p> <p>18 THE WITNESS: Not to -- not to my 19 knowledge and certainly not recently if it ever did 20 happen.</p> <p>21 MR. ABBAS: Indiana. 22 BY MR. ABBAS:</p>
<p style="text-align: right;">218</p> <p>1 protected by the law enforcement privilege. You can 2 answer if you can.</p> <p>3 THE WITNESS: Again, I have a hard time 4 with the word misused. I think there is often 5 clarification needed on what we or one of our 6 partners is doing, how we interact. But you are 7 implying certain nefarious activity in there. And 8 as far as something I would describe as nefarious, 9 not liking the word misused, I would say no.</p> <p>10 BY MR. ABBAS: 11 Q. Has TSC ever withheld TSDB information 12 from an entity that would otherwise receive TSDB 13 information as a result of how that entity was 14 utilizing TSDB information?</p> <p>15 MS. KONKOLY: Objection. Vague. 16 Objection as to scope. Objection insofar as the 17 answer would call for any information protected by 18 the law enforcement privilege. You can answer to 19 the extent that you know and can do so.</p> <p>20 THE WITNESS: I think those kind of 21 disagreements to take a sanction against a partner 22 like that would require us to go to the Watch</p>	<p style="text-align: right;">220</p> <p>1 Q. Has the Watch List Advisory Council -- is 2 it the Watch Listing Advisory Council or Watch List 3 Advisory Council?</p> <p>4 A. Watch Listing. 5 Q. Oh, Watching Listing, okay. Has the 6 Watch Listing Advisory Council ever made a decision 7 regarding the -- I am sorry.</p> <p>8 MR. ABBAS: Can you read back my last 9 question?</p> <p>10 (The record was read.) 11 BY MR. ABBAS: 12 Q. Has the Watch Listing Advisory Council 13 ever resolved a dispute regarding the use of TSDB 14 information?</p> <p>15 MS. KONKOLY: Objection. Asked and 16 answered. Objection as to scope, both temporarily 17 and now insofar as the topics for this deposition 18 are defined. Also objection as to the information 19 calling or the question calling for information 20 within the purview of another agency. Objection 21 insofar as the answer calls for information 22 protected by law enforcement privilege. You can</p>

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<p style="text-align: right;">221</p> <p>1 answer to the extent you can.</p> <p>2 THE WITNESS: Again, the word dispute is</p> <p>3 strong. I think constantly the Watch Listing</p> <p>4 Advisory Council is the venue for discussion around</p> <p>5 any number of issues. Whether or not -- I don't</p> <p>6 know if you would describe them as disputes or not.</p> <p>7 But there are certainly things that need to be</p> <p>8 settled constantly. And so the Watch Listing</p> <p>9 Advisory Council frequently is the body -- is the</p> <p>10 venue to resolve those disputes or discussions.</p> <p>11 Dispute might be too strong a word.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Has there ever been a dispute regarding</p> <p>14 the use of TSDB information that the Watch Listing</p> <p>15 Advisory Council has resolved?</p> <p>16 MS. KONKOLY: Objection as to scope.</p> <p>17 Temporally that is not within the topics that have</p> <p>18 been approved by the court for a discussion in</p> <p>19 today's deposition. Objection insofar as the</p> <p>20 information would call for -- as that answer would</p> <p>21 call for any information protected by the law</p> <p>22 enforcement privilege. You can answer if you can.</p>	<p style="text-align: right;">223</p> <p>1 going to keep it with ever, then.</p> <p>2 MS. KONKOLY: Okay.</p> <p>3 MR. ABBAS: I don't remember the</p> <p>4 question. Can you read back the question?</p> <p>5 (The record was read.)</p> <p>6 MS. KONKOLY: Same objections. And I</p> <p>7 will also add objection insofar as it calls for</p> <p>8 information protected by the deliberative process</p> <p>9 privilege. You can answer if you can.</p> <p>10 THE WITNESS: The Watch Listing Advisory</p> <p>11 Council -- I mean, I don't know exactly how you</p> <p>12 define a dispute. But that's the job of the Watch</p> <p>13 Listing Advisory Council. And it does it every time</p> <p>14 -- every time it meets to come to consensus on --</p> <p>15 you could call it a dispute, a suggestion, a</p> <p>16 proposal, different points of view. It does all of</p> <p>17 those things quite consistently and actively.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. How does the -- the Watch Listing</p> <p>20 Advisory Council makes decisions, correct?</p> <p>21 MS. KONKOLY: Objection. Vague.</p> <p>22 THE WITNESS: It's -- effectively, yes.</p>
<p style="text-align: right;">222</p> <p>1 MR. ABBAS: And just for the record,</p> <p>2 category four is measures TSC undertakes to ensure</p> <p>3 accuracy and reliability of the TSDB. Certainly,</p> <p>4 controls that TSDB places on the usage of TSDB</p> <p>5 information bear on the accuracy and reliability of</p> <p>6 the TSDB itself.</p> <p>7 MS. KONKOLY: Well, to clarify, that</p> <p>8 objection goes to your use of the word ever. My</p> <p>9 objections have been stated for the record and they</p> <p>10 stand. You can answer to the extent you can.</p> <p>11 MR. ABBAS: Is your objection -- like is</p> <p>12 your temporal objection because I am asking for too</p> <p>13 long a time frame?</p> <p>14 MS. KONKOLY: Yes, ever.</p> <p>15 MR. ABBAS: Fair enough. What time</p> <p>16 frame works for you?</p> <p>17 MS. KONKOLY: I might need --</p> <p>18 MR. ABBAS: Ten years. You guys do 10</p> <p>19 years? Can I give you 10 years?</p> <p>20 MS. KONKOLY: I am not sure we can do 10</p> <p>21 years. I am not sure I can give you an answer.</p> <p>22 MR. ABBAS: I am going to do -- so I am</p>	<p style="text-align: right;">224</p> <p>1 Yes.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. How does the Watch Listing Advisory</p> <p>4 Council memorialize its decisions?</p> <p>5 MS. KONKOLY: Objection insofar as the</p> <p>6 answer would call for information protected by</p> <p>7 either the deliberative process or the law</p> <p>8 enforcement privilege. You can answer to the extent</p> <p>9 you can.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. I am asking for just the decisions. Like</p> <p>12 are they written on a chalkboard? Do you have a</p> <p>13 Gchat? I mean, what is it? Is there a bulletin</p> <p>14 board? How does the Watch Listing Advisory Council</p> <p>15 memorialize the decisions that it makes? That's</p> <p>16 all.</p> <p>17 MS. KONKOLY: Same objections. And you</p> <p>18 can answer to the extent that you can.</p> <p>19 THE WITNESS: So after each meeting,</p> <p>20 there is a statement of conclusions prepared.</p> <p>21 MR. ABBAS: Arizona.</p> <p>22 THE WITNESS: I almost said Arizona for</p>

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<p style="text-align: right;">225</p> <p>1 you. But I thought counsel would slap me around.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. What is it called? What is it?</p> <p>4 Statements of conclusion?</p> <p>5 <b>A. Statement of conclusion.</b></p> <p>6 Q. Statement of conclusion.</p> <p>7 <b>A. And periodically the Watch Listing</b></p> <p>8 <b>Guidance is updated. And we have previously --</b></p> <p>9 Q. We have covered that.</p> <p>10 <b>A. There you go.</b></p> <p>11 Q. How many statements of conclusion has --</p> <p>12 well, how many times a year does -- let's take 2017.</p> <p>13 How many times in 2017 did the Watch Listing</p> <p>14 Advisory Council meet?</p> <p>15 MS. KONKOLY: Objection insofar as that</p> <p>16 call for information protected by the law</p> <p>17 enforcement privilege. You can answer if you can.</p> <p>18 THE WITNESS: I would say generally</p> <p>19 quarterly. I don't remember specifically.</p> <p>20 Quarterly, sometimes more frequently.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. So at least -- at least multiple times a</p>	<p style="text-align: right;">227</p> <p>1 MR. ABBAS: Arizona.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. What kinds of things are in these</p> <p>4 statement of conclusions?</p> <p>5 MS. KONKOLY: Objection. Vague.</p> <p>6 Objection insofar as it calls for information</p> <p>7 protected by either the deliberative process</p> <p>8 privilege or the law enforcement privilege. You can</p> <p>9 answer to the extent that you can.</p> <p>10 THE WITNESS: Topics discussed, consensus</p> <p>11 reached, do-outs, report-backs from various</p> <p>12 participants.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Are you -- is the Terror Screening Center</p> <p>15 aware of any Watch Listing Advisory Council</p> <p>16 statement of conclusions that regards the -- I am</p> <p>17 sorry. I am going to start that question over</p> <p>18 again. When the Watch Listing Advisory Council</p> <p>19 issues a statement of conclusion, are the member</p> <p>20 agencies of the Watch Listing Advisory Council bound</p> <p>21 to follow the substance of those conclusions?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>
<p style="text-align: right;">226</p> <p>1 year?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And I have asked this, but I just can't</p> <p>4 remember the answer. The Watch Listing Advisory</p> <p>5 Council has existed since at least 2009?</p> <p>6 MS. KONKOLY: Objection. Asked and</p> <p>7 answered.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. And I could be wrong.</p> <p>10 <b>A. I believe so. I believe so.</b></p> <p>11 Q. Okay. It has existed for at least the</p> <p>12 last five years?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. And during those five years the</p> <p>15 Watch Listing Advisory Council -- each of those five</p> <p>16 years it has met multiple times?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And each time the Watch Listing Advisory</p> <p>19 Council meets, it issues a statement of conclusion?</p> <p>20 <b>A. It certainly has since I have been there.</b></p> <p>21 <b>And I have reason -- as far as I know, it did prior</b></p> <p>22 <b>to that.</b></p>	<p style="text-align: right;">228</p> <p>1 Objection insofar as the information -- the answer</p> <p>2 calls for information protected by the law</p> <p>3 enforcement privilege or a legal conclusion. And I</p> <p>4 will also note an objection to scope. You can</p> <p>5 answer if you can.</p> <p>6 THE WITNESS: I think because those</p> <p>7 decisions are reached by consensus, it is understood</p> <p>8 that that is the agreement. And if somebody wants</p> <p>9 to revisit that agreement, there's the</p> <p>10 aforementioned processes to do so.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. So is the Terror Screening Center's</p> <p>13 testimony that the member agencies that comprise the</p> <p>14 Watch Listing Advisory Council adhere to the</p> <p>15 substance of the Watch Listing Advisory Council's</p> <p>16 statements of conclusions?</p> <p>17 MS. KONKOLY: Objection as to the extent</p> <p>18 that information calls for information within the</p> <p>19 purview of other agencies Mr. Groh cannot bind.</p> <p>20 Objection. Vague. Objection insofar as the</p> <p>21 information calls for any information protected by</p> <p>22 the law enforcement privilege. You can answer to</p>

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<p style="text-align: right;">229</p> <p>1 the extent that you can.</p> <p>2 THE WITNESS: Yes. If it has been</p> <p>3 concluded by the council, that means it was at that</p> <p>4 point without dissent. And so my expectation would</p> <p>5 be that that's what we would follow until -- unless</p> <p>6 and until we ever revisited the issue.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Does the Terror Screening Center maintain</p> <p>9 a record of all of the statements of conclusions</p> <p>10 that the Watch Listing Advisory Council has issued?</p> <p>11 <b>A. I believe so.</b></p> <p>12 Q. Have any of those statement of</p> <p>13 conclusions that the Watch Listing Advisory Council</p> <p>14 has issued regard tightening or loosening the TSDB's</p> <p>15 inclusion standard?</p> <p>16 MS. KONKOLY: Objection insofar as that</p> <p>17 information calls for information protected by</p> <p>18 either the law enforcement privilege or the state</p> <p>19 secrets privilege potentially SSI. Objection</p> <p>20 insofar as the information is within the purview of</p> <p>21 other agencies. You can answer to the extent that</p> <p>22 you can.</p>	<p style="text-align: right;">231</p> <p>1 permissive?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 Objection insofar as the answer --</p> <p>4 THE WITNESS: Yeah, it was vague.</p> <p>5 Describe which way you mean permissive to be.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. So the number of nominations to the TSDB</p> <p>8 varies by year, correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And the number of nominations accepted by</p> <p>11 TSC varies by year, correct?</p> <p>12 <b>A. Yes. It varies all the time, but it can</b></p> <p>13 <b>be reflected by the year.</b></p> <p>14 Q. Has TSC ever made it -- has TSC ever</p> <p>15 taken actions that would produce a higher nomination</p> <p>16 acceptance rate by making the TSDB inclusion</p> <p>17 standards more permissive?</p> <p>18 MS. KONKOLY: Objection. Vague.</p> <p>19 Objection insofar as the answer calls for</p> <p>20 information protected by the law enforcement</p> <p>21 privilege and state secrets privilege. You can</p> <p>22 answer if you can.</p>
<p style="text-align: right;">230</p> <p>1 THE WITNESS: I believe that it is likely</p> <p>2 that they do.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. So there have been Watch Listing Advisory</p> <p>5 Council statement of conclusions that regard</p> <p>6 loosening or tightening the TSDB's inclusion</p> <p>7 standards?</p> <p>8 MS. KONKOLY: Objection.</p> <p>9 Mischaracterizes prior testimony. Objection. Same</p> <p>10 objections insofar as the answer would implicate</p> <p>11 information protected by the law enforcement,</p> <p>12 potentially the state secrets or SSI privileges.</p> <p>13 You can answer if you can.</p> <p>14 THE WITNESS: I believe it would be</p> <p>15 reflected there or in an update to the Watch Listing</p> <p>16 Guidance or both.</p> <p>17 Q. Has the TSDB inclusion standard ever been</p> <p>18 tightened?</p> <p>19 MS. KONKOLY: Objection.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. I'm sorry. Let me rephrase. Has the</p> <p>22 TSDB inclusion standard ever been made more</p>	<p style="text-align: right;">232</p> <p>1 THE WITNESS: So you mean -- you mean to</p> <p>2 -- I take it you mean to raise or lower the bar.</p> <p>3 You mean to lower the bar for nominations. Is that</p> <p>4 what you are saying?</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. To make more permissive would be lowering</p> <p>7 the bar. To make less permissive would be raising</p> <p>8 the bar.</p> <p>9 MS. KONKOLY: Same objections.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. So let me -- with that understanding, let</p> <p>12 me ask the question again. I think now -- I think</p> <p>13 now we are on the same page. Has TSC taken any</p> <p>14 actions that would make the inclusion process more</p> <p>15 permissive?</p> <p>16 MS. KONKOLY: Objection. Vague.</p> <p>17 Objection insofar as the answer would call for any</p> <p>18 information protected by the law enforcement or</p> <p>19 potentially state secrets privileges. You can</p> <p>20 answer to the extent you can.</p> <p>21 THE WITNESS: So I think we already</p> <p>22 described changes that were made circa 2009 with</p>

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<p style="text-align: right;">233</p> <p>1 regard to exceptions to the reasonable suspicion 2 standard. And to me that would fall into the 3 category that you just described. So I think the 4 answer is yes. 5 BY MR. ABBAS: 6 Q. Has TSC ever made the inclusion process 7 less permissive? 8 MS. KONKOLY: Objection. Vague. 9 Objection insofar as the answer would call for 10 information protected by the law enforcement and 11 potentially state secrets privilege. You can answer 12 if you can. 13 THE WITNESS: In other words, made -- 14 raised the bar to go back to our previous. I don't 15 think I can get into a great deal of specificity, 16 but I believe the answer to that is also yes. 17 BY MR. ABBAS: 18 Q. When has the Terror Screening Center made 19 the inclusion process less permissive? 20 MS. KONKOLY: Objection. Vague. 21 Objection insofar as the answer calls for 22 information protected by either the law enforcement</p>	<p style="text-align: right;">235</p> <p>1 what we said earlier, I don't think I can answer 2 that. 3 MR. ABBAS: Okay. So the number of times 4 is also covered by the law enforcement privilege and 5 the state secrets privilege? 6 MS. KONKOLY: That's the objection on the 7 record. 8 MR. ABBAS: Okay. I am just making sure. 9 BY MR. ABBAS: 10 Q. Does TSC export TSDB information to 11 entities that do not maintain near real-time access 12 to TSDB information updates and changes? 13 MS. KONKOLY: I am sorry. Objection. 14 Vague. Objection. Compound. Objection insofar as 15 the answer calls for information protected by the 16 enforcement privilege. You can answer if you can. 17 THE WITNESS: Yes, there are entities 18 that do not receive a transactional update. 19 BY MR. ABBAS: 20 Q. So what happens when TSC exports TSDB 21 information to an entity that does not receive 22 transactional updates to the TSDB and then there are</p>
<p style="text-align: right;">234</p> <p>1 or the state secrets privilege potentially. You can 2 answer if you can. 3 THE WITNESS: I don't believe I can 4 answer that. 5 MS. KONKOLY: Okay. 6 MR. ABBAS: You can't provide it. What's 7 the basis of the privilege assertion regarding the 8 date as to when the inclusion process was made less 9 permissive? What privilege are being asserted? 10 MS. KONKOLY: Law enforcement, state 11 secrets potentially. They are both on the record 12 and they stand. 13 BY MR. ABBAS: 14 Q. Fine. What is -- how many times has the 15 Terror Screening Center made the inclusion process 16 less permissive? 17 MS. KONKOLY: Objection. Vague. 18 Objection insofar as the answer would call for 19 information protected by the law enforcement or 20 potentially the state secrets privilege. Answer if 21 you can. 22 THE WITNESS: I think in keeping with</p>	<p style="text-align: right;">236</p> <p>1 transactional updates to the TSDB? 2 MS. KONKOLY: Objection. Vague. 3 Objection. Compound. Objection insofar as the 4 answer calls for information protected by the law 5 enforcement privilege. You can answer if you can. 6 THE WITNESS: So those cumulative changes 7 that you are referring to would be updated the next 8 time that that export is periodically updated. That 9 actually used to be true of many more, if not all of 10 our exports. And over time, more and more of them 11 have become transactional at some of the 12 improvements we have made to the system along the 13 way. 14 Q. So TSC's goal -- is it -- is it TSC's 15 goal to provide TSDB recipients with near real-time 16 access to changes that get made to the TSDB? 17 MS. KONKOLY: Objection. Vague. 18 THE WITNESS: I agree that would be 19 ideal. 20 BY MR. ABBAS: 21 Q. But there are entities who do not receive 22 near real-time information regarding updates to the</p>

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<p style="text-align: right;">237</p> <p>1 TSDB, correct?</p> <p>2 MS. KONKOLY: Objection. Vague.</p> <p>3 Objection. Asked and answered.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Are there domestic entities that do not</p> <p>7 receive near real-time updates to changes that get</p> <p>8 made in the TSDB?</p> <p>9 MS. KONKOLY: Objection. Vague.</p> <p>10 Objection. Asked and answered. Objection insofar</p> <p>11 as the answer would call for information protected</p> <p>12 by the law enforcement privilege. You can answer if</p> <p>13 you can.</p> <p>14 THE WITNESS: I don't believe there are</p> <p>15 domestic entities that don't have transactional</p> <p>16 updates anymore.</p> <p>17 MR. ABBAS: Indiana.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. So TSC's testimony today is that all</p> <p>20 domestic entities that receive TSDB information are</p> <p>21 receiving that information in near real time to</p> <p>22 reflect changes to the TSDB?</p>	<p style="text-align: right;">239</p> <p>1 information protected by the law enforcement or</p> <p>2 potentially the state secrets privilege. You can</p> <p>3 answer if you can.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. So every foreign government that receives</p> <p>7 TSDB information has an agreement with TSC regarding</p> <p>8 the dissemination of TSDB information?</p> <p>9 <b>A. Every recipient of information has an</b></p> <p>10 <b>agreement with the United States Government.</b></p> <p>11 Q. Okay. So it might not be with the Terror</p> <p>12 Screening Center. It could be with the U.S.</p> <p>13 Government?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Who would -- who in the U.S. Government</p> <p>16 is signing these agreements, if not, TSC?</p> <p>17 MS. KONKOLY: Objection. Vague.</p> <p>18 Objection insofar as that question calls for</p> <p>19 information within the purview of other agencies.</p> <p>20 You can testify as to your understanding, but that</p> <p>21 answer will not bind the agency. And objection</p> <p>22 insofar as the question calls for information</p>
<p style="text-align: right;">238</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Asked and answered. Objection insofar</p> <p>3 as any additional answer would call for information</p> <p>4 protected by the law enforcement privilege. You can</p> <p>5 answer if you can.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Do all foreign governments receive near</p> <p>9 real-time access to the updates and changes to TSDB?</p> <p>10 MS. KONKOLY: Objection. Vague.</p> <p>11 Objection insofar as the answer calls for</p> <p>12 information protected by the law enforcement or</p> <p>13 potentially state secrets privilege. You can answer</p> <p>14 if you can.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Does -- I am sorry. Does TSC disseminate</p> <p>18 information to foreign governments in the absence of</p> <p>19 an agreement with that foreign government regarding</p> <p>20 the dissemination and use of TSDB information?</p> <p>21 MS. KONKOLY: Objection insofar as that</p> <p>22 information calls for -- that answer calls for</p>	<p style="text-align: right;">240</p> <p>1 protected by any law enforcement privilege. You can</p> <p>2 answer if you can.</p> <p>3 THE WITNESS: I don't know if we need to</p> <p>4 confer on that. I am not sure.</p> <p>5 MS. KONKOLY: Okay.</p> <p>6 MR. ABBAS: Do you want us to leave? I</p> <p>7 could use like a five-minute break.</p> <p>8 MS. KONKOLY: Okay. We will take a</p> <p>9 five-minute break.</p> <p>10 THE VIDEOGRAPHER: We are going off the</p> <p>11 record. The time is 3:01 p.m.</p> <p>12 (A recess was held.)</p> <p>13 THE VIDEOGRAPHER: We are back on the</p> <p>14 record. The time is 3:12 p.m. And we have been on</p> <p>15 the record for 4 hours and 15 minutes.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Does TSC have any information that any</p> <p>18 non-governmental entities receives in any way access</p> <p>19 to TSDB information?</p> <p>20 MS. KONKOLY: Objection insofar as that</p> <p>21 -- objection. Vague. Objection insofar as the</p> <p>22 answer calls for information protected by law</p>

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<p style="text-align: right;">241</p> <p>1 enforcement or SSI privileges. You can answer to 2 the extent you can. I will also interpose that I 3 believe that question has been asked and answered. 4 THE WITNESS: I am sorry. Repeat that 5 one more time for me. 6 MR. ABBAS: Can you read it back. 7 (The record was read.) 8 THE WITNESS: I am trying to determine 9 what the word access means in this question. For 10 instance, when you describe TSA, you know, and 11 denials of boardings on aircraft, obviously an 12 airline is aware that one of their passengers has to 13 some degree been denied boarding. So I don't know 14 what you mean. You mean the ability to search TSDB 15 information or that could be in some downstream 16 process somehow? 17 Q. Both. So, yeah, I would agree with you 18 that the airlines have some kind of access to TSDB 19 information, because certainly when a boarding pass 20 printing result doesn't issue because of a person's 21 status on the No-Fly List, the airline gets that 22 indication whether or not the passenger does. But</p>	<p style="text-align: right;">243</p> <p>1 THE WITNESS: Again, subject to just -- I 2 think it is the same as the previous answer. Not 3 that I am aware of, excluding some interaction with 4 airlines. And even in that case, I would say that 5 the example you described with a boarding pass or 6 such that there are other ways that somebody can 7 receive additional screening or be denied boarding. 8 So, you know, that information is used in that case. 9 And I think often people assume they know what's 10 going on. But it is sometimes more complicated than 11 that. But subject to that exclusion, none that I am 12 aware of. 13 BY MR. ABBAS: 14 Q. Federal Government employees have access 15 to TSDB information, correct? 16 MS. KONKOLY: Objection. Misleading. 17 Objection. Vague. 18 BY MR. ABBAS: 19 Q. Let me -- it's not a trick question. 20 There are some Federal Government employees that 21 have access to TSDB information, correct? 22 <b>A. Yes.</b></p>
<p style="text-align: right;">242</p> <p>1 beyond airlines, what other non-governmental 2 entities receive access to information -- I am 3 sorry. What other non-airline -- I am sorry. Aside 4 from airlines, what other non-governmental entities 5 receive access of any kind to TSDB information? 6 MS. KONKOLY: Objection. Vague. 7 Objection. Compound. Objection insofar as that 8 information calls -- that answer calls for 9 information protected by the law enforcement 10 privilege. You can answer to the extent you can. 11 THE WITNESS: Outside the example we have 12 excluded, I am not aware of any. 13 BY MR. ABBAS: 14 Q. Do -- are there other non-governmental -- 15 are there other non-governmental entities who learn 16 of TSDB information via the utilization of TSDB 17 information? 18 MS. KONKOLY: Objection. Vague. 19 Objection insofar as the answer would call for 20 information protected by the law enforcement 21 privilege. You can answer to the extent that you 22 can.</p>	<p style="text-align: right;">244</p> <p>1 Q. Are there contractors to the Federal 2 Government who are not Federal Government employees 3 who also have access to TSDB information? 4 <b>A. Yes.</b> 5 Q. Are there contractors at TSC who are not 6 employees of TSC who have access to TSDB 7 information? 8 <b>A. I would call them contract employees of</b> 9 <b>TSDB. But yes, they are contractors, not Federal</b> 10 <b>Government employees.</b> 11 Q. They are not -- so there are 12 non-employees that TSC -- I am sorry. There are 13 persons who are not TSC -- I am sorry. Let me start 14 over again. There are persons who work for 15 companies that contract with the Federal Government 16 who have access via their employer to TSDB 17 information? 18 MS. KONKOLY: Objection. Vague. 19 Objection. Asked and answered. 20 THE WITNESS: They work -- I wouldn't say 21 they have -- they have access because their employer 22 has a contract. But they don't have access via</p>

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<p style="text-align: right;">245</p> <p>1 their own employer. They have access because they</p> <p>2 work at the TSC.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Which companies does -- which contracting</p> <p>5 companies does TSC have agreements with?</p> <p>6 MS. KONKOLY: Objection insofar as that</p> <p>7 question calls for information protected by the law</p> <p>8 enforcement privilege. But you can answer if you</p> <p>9 can.</p> <p>10 THE WITNESS: It is what it is.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. It is what it is.</p> <p>13 A. <b>So yeah, I think that's the prime -- the</b></p> <p>14 <b>two primary companies. One called STOPSO.</b></p> <p>15 Q. Can you spell that?</p> <p>16 A. <b>That's their acronym S-T-O-P-S-O. The</b></p> <p>17 <b>second would be Sotera Defense.</b></p> <p>18 Q. Can you spell that?</p> <p>19 A. <b>S-O-T-E-R-A.</b></p> <p>20 Q. S-O?</p> <p>21 A. <b>T-E-R-A, I believe.</b></p> <p>22 Q. STOPSO and Sotera?</p>	<p style="text-align: right;">247</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. How long has TSC had an agreement with</p> <p>3 STOPSO?</p> <p>4 A. <b>The current contract is, I believe, in</b></p> <p>5 <b>its fourth year. There may -- I believe that STOPSO</b></p> <p>6 <b>has for some time before that. But I don't know</b></p> <p>7 <b>offhand exactly when their first interaction with</b></p> <p>8 <b>TSC was. I believe there was a period before the</b></p> <p>9 <b>current contract. But the current one is in the</b></p> <p>10 <b>fourth year.</b></p> <p>11 Q. In the fourth year?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. Got it. How much does TSC pay STOPSO?</p> <p>14 MS. KONKOLY: Objection insofar as that</p> <p>15 question calls for information protected by the law</p> <p>16 enforcement privilege or proprietary information.</p> <p>17 But you can answer to the extent that you can.</p> <p>18 MR. ABBAS: So hold on. I want to</p> <p>19 understand the objections. So the amount of money</p> <p>20 that TSC spends on STOPSO is proprietary</p> <p>21 information?</p> <p>22 MS. KONKOLY: I don't know if it is. I</p>
<p style="text-align: right;">246</p> <p>1 A. <b>Yes.</b></p> <p>2 Q. I'm sorry. Go ahead.</p> <p>3 A. <b>No, go ahead.</b></p> <p>4 Q. No, no, no. Please.</p> <p>5 A. <b>No, no. I am good.</b></p> <p>6 Q. Is STOPSO an acronym or is that just like</p> <p>7 a cute name?</p> <p>8 A. <b>I am trying to remember exactly. It's</b></p> <p>9 <b>strategic --</b></p> <p>10 Q. Oh, you think it is an acronym?</p> <p>11 A. <b>I think it is an acronym, yes.</b></p> <p>12 Q. Got it. Strategic Operation Solutions?</p> <p>13 A. <b>That sounds right.</b></p> <p>14 Q. Is STOPSO a U.S. company?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. Is Sotera a U.S. company?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. How long has TSC had a contract with</p> <p>19 STOPSO? Well, I am sorry. Let me back up. Does</p> <p>20 TSC have an agreement with STOPSO?</p> <p>21 A. <b>Yes.</b></p> <p>22 MR. ABBAS: Arizona.</p>	<p style="text-align: right;">248</p> <p>1 am raising the potential objection and allowing the</p> <p>2 witness to instruct if he can or to answer if he</p> <p>3 can.</p> <p>4 MR. ABBAS: Are you instructing him not</p> <p>5 --</p> <p>6 MS. KONKOLY: No.</p> <p>7 MR. ABBAS: -- to provide proprietary</p> <p>8 information?</p> <p>9 MS. KONKOLY: I did not make an</p> <p>10 instruction not to answer. I said you can answer to</p> <p>11 the extent that you can.</p> <p>12 MR. ABBAS: And I want to understand the</p> <p>13 law enforcement privilege assertion. Why was --</p> <p>14 MS. KONKOLY: It was to the extent that.</p> <p>15 And I am telling the witness that he can answer to</p> <p>16 the extent that he can.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Sure. Okay.</p> <p>19 A. <b>I don't -- I don't recall exactly what --</b></p> <p>20 <b>I don't manage the contract, per se. And I don't</b></p> <p>21 <b>recall exactly what -- what we are paying them in</b></p> <p>22 <b>any given period of time.</b></p>



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<p style="text-align: right;">249</p> <p>1 Q. Is it millions of dollars?</p> <p>2 <b>A. Yes.</b></p> <p>3 MS. KONKOLY: Objection. Calls for</p> <p>4 speculation.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Is it over \$10 million?</p> <p>7 MS. KONKOLY: I am going to object again</p> <p>8 that this calls for speculation. I am also going to</p> <p>9 note that these questions are outside the scope of</p> <p>10 the protective order entered by the court. I will</p> <p>11 allow the witness to answer this question. But if</p> <p>12 this proceeds too much further, I have to --</p> <p>13 MR. ABBAS: These are dissemination</p> <p>14 questions. The size of the contract bears on how</p> <p>15 many people STOPSO has working -- STOPSO.</p> <p>16 MS. KONKOLY: Objection stands. You can</p> <p>17 answer to the extent that you can.</p> <p>18 THE WITNESS: I believe it is likely more</p> <p>19 than \$10 million. Beyond that, I would be wildly</p> <p>20 speculating.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Are all these STOPSO contractors located</p>	<p style="text-align: right;">251</p> <p>1 Center Headquarters?</p> <p>2 <b>A. And one other small site.</b></p> <p>3 Q. Where is that other small site?</p> <p>4 <b>A. I don't think I can say.</b></p> <p>5 MS. KONKOLY: Objection insofar as that</p> <p>6 answer calls for information protected by the law</p> <p>7 enforcement privilege.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Is that other site a Terror Screening</p> <p>10 Center office?</p> <p>11 MS. KONKOLY: Objection insofar as the</p> <p>12 answer would call for information protected by the</p> <p>13 law enforcement privilege. You can answer if you</p> <p>14 can.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. What is your best estimate of how many</p> <p>18 contractors work out of the TSC Headquarters in</p> <p>19 Vienna, Virginia whether they work ultimately for</p> <p>20 STOPSO or one of the subcontractors of STOPSO?</p> <p>21 MS. KONKOLY: Objection. Compound.</p> <p>22 Objection. Calls for speculation.</p>
<p style="text-align: right;">250</p> <p>1 at the Terror Screening Center's headquarters in</p> <p>2 Vienna, Virginia?</p> <p>3 <b>A. Yes. Every one that we employ from</b></p> <p>4 <b>STOPSO would work at TSC.</b></p> <p>5 Q. How many contractors from -- how many</p> <p>6 contractors from STOPSO are working at the Terror</p> <p>7 Screening Center's headquarters in Vienna, Virginia?</p> <p>8 MS. KONKOLY: Objection. Calls for</p> <p>9 speculation.</p> <p>10 THE WITNESS: First, let me clarify.</p> <p>11 There is one other -- there is -- the contract calls</p> <p>12 for them to also work at one other site beyond the</p> <p>13 TSC in Vienna. So there is one additional. Beyond</p> <p>14 that, I can't tell you -- I don't know exactly how</p> <p>15 many of the contractors work for STOPSO. They also</p> <p>16 have arrangements with some subcontractors through</p> <p>17 that arrangement that I really don't know a lot of</p> <p>18 particulars about. They all work at the TSC.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. So TSC contracts with STOPSO, and then</p> <p>21 STOPSO contracts with other people. And they all</p> <p>22 are in Vienna, Virginia at the Terror Screening</p>	<p style="text-align: right;">252</p> <p>1 THE WITNESS: Approximately 300.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. There's 300 STOPSO contractors or STOPSO</p> <p>4 subcontractors that work at the Terror Screening</p> <p>5 Center?</p> <p>6 <b>A. 300 STOPSO contractors or Sotera.</b></p> <p>7 Q. So you are not sure how many -- is it</p> <p>8 about half and half between STOPSO and Sotera?</p> <p>9 MS. KONKOLY: Objection. Calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: Yeah, I couldn't tell you.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. I mean, is it -- like is it really</p> <p>14 lopsided where STOPSO has three people and Sotera</p> <p>15 has 297 people? Is it split somewhere down -- I</p> <p>16 mean, give me what your sense is.</p> <p>17 MS. KONKOLY: Calls for speculation.</p> <p>18 THE WITNESS: My sense, which is an</p> <p>19 estimate, is it is maybe two thirds STOPSO or</p> <p>20 subcontractors and about one third Sotera. Sotera</p> <p>21 handles IT development. STOPSO handles most other</p> <p>22 things.</p>

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<p>253</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. What's -- what are those other things</p> <p>3 that STOPSO handles?</p> <p>4 <b>A. They work together with the government</b></p> <p>5 <b>employees for all the things we have been talking</b></p> <p>6 <b>about.</b></p> <p>7 Q. Is a STOPSO -- are there STOPSO</p> <p>8 contractors that can accept nominations on behalf of</p> <p>9 TSC to the TSDB?</p> <p>10 MS. KONKOLY: Objection insofar as that</p> <p>11 question calls for information protected by the law</p> <p>12 enforcement privilege. You can answer if you can.</p> <p>13 THE WITNESS: Not for U.S. persons.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. So with regards to U.S. persons, the only</p> <p>16 individuals who can accept the nomination of a U.S.</p> <p>17 person to the TSDB are TSC employees, correct?</p> <p>18 <b>A. Yes. I would say government employees</b></p> <p>19 <b>just to add that qualification. Some of our</b></p> <p>20 <b>personnel actually work for other government</b></p> <p>21 <b>agencies that are detailed to the TSC.</b></p> <p>22 Q. Got it. What else does -- what else do</p>	<p>255</p> <p>1 nominations of U.S. persons to the TSDB?</p> <p>2 MS. KONKOLY: Objection.</p> <p>3 Mischaracterizes his prior testimony. Objection as</p> <p>4 to scope of the approved topics for this deposition.</p> <p>5 You can answer to the extent you can.</p> <p>6 THE WITNESS: I think I just answered. I</p> <p>7 don't know that that role has always been the case.</p> <p>8 I know what it is now.</p> <p>9 MR. ABBAS: Indiana.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Who made the rule that STOPSO contractors</p> <p>12 cannot accept the nominations of U.S. persons to the</p> <p>13 TSDB?</p> <p>14 MS. KONKOLY: Objection insofar as that</p> <p>15 information -- as that question calls for</p> <p>16 information protected by the law enforcement</p> <p>17 privilege. You can answer to the extent that you</p> <p>18 can.</p> <p>19 THE WITNESS: I presume TSC management.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. And you don't know when TSC management</p> <p>22 made the decision to forbid STOPSO contractors from</p>
<p>254</p> <p>1 STOPSO contractors do? I am sorry. Let me ask you</p> <p>2 this. Why? Why is it that STOPSO contractors can</p> <p>3 accept the nominations of non-U.S. persons to the</p> <p>4 TSDB, whereas U.S.-person nominations can only be</p> <p>5 accepted by Federal Government employees?</p> <p>6 MS. KONKOLY: Objection insofar as that</p> <p>7 answer would call for information protected by the</p> <p>8 law enforcement privilege. But you can answer if</p> <p>9 you can.</p> <p>10 THE WITNESS: Well, I think it would</p> <p>11 require me to draw a legal conclusion.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Has that always been -- has it always</p> <p>14 been the case that STOPSO contractors cannot accept</p> <p>15 the nominations of U.S. persons to the TSDB?</p> <p>16 MS. KONKOLY: Objection as to scope.</p> <p>17 THE WITNESS: I don't know if -- I don't</p> <p>18 know if it has always -- if it never changed along</p> <p>19 the way.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Is it TSC's testimony today that STOPSO</p> <p>22 contractors have never been able to accept the</p>	<p>256</p> <p>1 accepting U.S.-person TSDB nominations?</p> <p>2 <b>A. It may have always been the case, so I</b></p> <p>3 <b>don't know that it was decision.</b></p> <p>4 MR. ABBAS: Sure. Indiana.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Do the STOPSO -- I know -- so right now</p> <p>7 today, STOPSO contractors do not have the authority</p> <p>8 to accept TSDB nominations of U.S. persons, correct?</p> <p>9 <b>A. Not the final authority.</b></p> <p>10 Q. They can make a recommendation about</p> <p>11 whether a nomination of a U.S. person to the TSDB</p> <p>12 should be accepted?</p> <p>13 <b>A. Effectively, yes.</b></p> <p>14 Q. Has -- what does Sotera do for the Terror</p> <p>15 Screening Center?</p> <p>16 MS. KONKOLY: Objection. Vague.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Well, hold on. Let me withdraw that</p> <p>19 question. Sotera is a U.S. company that contracts</p> <p>20 with the Terror Screening Center, correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. There is an agreement between Sotera and</p>

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<p style="text-align: right;">257</p> <p>1 the Terror Screening Center that governs the</p> <p>2 services that Sotera provide TSC, correct?</p> <p>3 <b>A. Yes, the contract.</b></p> <p>4 Q. When did Sotera and TSC enter into a</p> <p>5 contract?</p> <p>6 MS. KONKOLY: Objection. Scope. You can</p> <p>7 answer if you know.</p> <p>8 THE WITNESS: Most recently it was</p> <p>9 sometime last year. And I believe they were the</p> <p>10 incumbent. So it was awarded to them after a</p> <p>11 competition. So they had -- they had a previous</p> <p>12 contract. And I am not sure before that contract.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. When was the -- so as far as you know,</p> <p>15 how long has Sotera and TSC been in a contract</p> <p>16 together?</p> <p>17 <b>A. I would have to say at least likely six</b></p> <p>18 <b>years. It was probably a five-year period of</b></p> <p>19 <b>performance before. And it was re-competed last</b></p> <p>20 <b>year almost exactly a year, maybe a little bit more.</b></p> <p>21 Q. What other companies competed for the</p> <p>22 contract that Sotera competed for?</p>	<p style="text-align: right;">259</p> <p>1 look at those contracts. I can't tell you if he had</p> <p>2 some role in some final review of that. Also, who</p> <p>3 would have been involved would have been our --</p> <p>4 would have been the FBI's IT -- IT branch from a</p> <p>5 technical perspective. So it is not entirely TSC.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Who -- so let's back up to STOPSO. Did</p> <p>8 TSC decide to hire STOPSO?</p> <p>9 MS. KONKOLY: Objection. Scope. You can</p> <p>10 answer if you know.</p> <p>11 MR. ABBAS: These are all dissemination</p> <p>12 questions?</p> <p>13 MS. KONKOLY: And the objection stands.</p> <p>14 He can answer if he knows.</p> <p>15 THE WITNESS: I am not an expert on</p> <p>16 procurement. It would have gone through, I think,</p> <p>17 the departmental. So for Department of Justice, it</p> <p>18 would have gone through Department of Justice</p> <p>19 procurement and then ultimately the FBI procurement</p> <p>20 process. Beyond that, I am not able to tell you. I</p> <p>21 didn't participate in it.</p> <p>22 MR. ABBAS: Indiana.</p>
<p style="text-align: right;">258</p> <p>1 MS. KONKOLY: Objection. Scope. You can</p> <p>2 answer if you know.</p> <p>3 THE WITNESS: I don't remember. I wasn't</p> <p>4 on the selection.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Who was on the Selection Committee?</p> <p>7 MS. KONKOLY: Objection. Scope.</p> <p>8 Objection. Privacy Act.</p> <p>9 THE WITNESS: I don't recall.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Yeah. And I don't want names. I really</p> <p>12 don't. Was the -- who is the head of the Terror</p> <p>13 Screening Center?</p> <p>14 <b>A. Charles Kable.</b></p> <p>15 Q. Was Charles Kable involved with deciding</p> <p>16 which company was going to provide the services that</p> <p>17 Sotera ultimately provided to TSC?</p> <p>18 MS. KONKOLY: I am going to object. This</p> <p>19 question is outside of the scope of the agreed-upon</p> <p>20 topics. You can answer if you know.</p> <p>21 THE WITNESS: I don't believe he was on</p> <p>22 the Technical Review Committee. The folks actually</p>	<p style="text-align: right;">260</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Who decided that TSC was worth a contract</p> <p>3 with Sotera?</p> <p>4 MS. KONKOLY: Again, objection as to this</p> <p>5 being outside of the scope of the designated topics.</p> <p>6 You can answer if you know.</p> <p>7 THE WITNESS: It would ultimately be</p> <p>8 awarded by the contracting officer for that</p> <p>9 particular contract.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Who is the contracting officer for the</p> <p>12 Sotera contract?</p> <p>13 MS. KONKOLY: Objection. Privacy Act.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I am not asking for a name. Just like --</p> <p>16 I'm sorry. What agency was -- is the contracting</p> <p>17 officer for the Sotera agreement employed by?</p> <p>18 MS. KONKOLY: Objection. Scope. This is</p> <p>19 not within the designated topics for this</p> <p>20 deposition. You can answer if you happen to know.</p> <p>21 THE WITNESS: I believe the FBI.</p> <p>22 BY MR. ABBAS:</p>

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<p>261</p> <p>1 Q. And the contracting officer, that's what</p> <p>2 you called him or her?</p> <p>3 <b>A. It is a term of art. It is a designated</b></p> <p>4 <b>position, yes.</b></p> <p>5 Q. And likely does the term of art mean that</p> <p>6 that's the person who has the kind of final</p> <p>7 authority to enter the agency into the contract?</p> <p>8 <b>A. I believe that's generally the case.</b></p> <p>9 Q. And so with regards to the Sotera</p> <p>10 contracts, there was an FBI contracting officer that</p> <p>11 had the authority to enter TSC into that contract?</p> <p>12 MS. KONKOLY: Objection as to scope. You</p> <p>13 can answer if you happen to know.</p> <p>14 THE WITNESS: I believe that's how it</p> <p>15 works.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. With regard to the STOPSO contract, was</p> <p>18 it also an FBI contracting officer who entered TSC</p> <p>19 into the contract with STOPSO?</p> <p>20 MS. KONKOLY: Objection as to scope. You</p> <p>21 can answer if you know.</p> <p>22 THE WITNESS: That would be the normal</p>	<p>263</p> <p>1 <b>A. Approximately 200 total individuals</b></p> <p>2 <b>outside of contractors.</b></p> <p>3 Q. And other agencies assign their employees</p> <p>4 to the Terror Screening Center like on detail. Is</p> <p>5 that what the language is?</p> <p>6 <b>A. Fair enough, yes.</b></p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 THE WITNESS: And I included that in the</p> <p>9 200.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Oh, okay, okay. And I just want to -- I</p> <p>12 am only talking about the people that -- when a</p> <p>13 Terror Screening Center employee gets a check, like</p> <p>14 their paycheck, does it say the Terror Screening</p> <p>15 Center? Does it say Charles Kable on it?</p> <p>16 <b>A. No. Nobody is paid by the Terror</b></p> <p>17 <b>Screening Center.</b></p> <p>18 Q. Who pays Terror Screening Center</p> <p>19 employees?</p> <p>20 MS. KONKOLY: Objection. Outside of</p> <p>21 scope. You can answer if you happen to know.</p> <p>22 THE WITNESS: If -- well, their home</p>
<p>262</p> <p>1 course of things. I have no reason to believe that</p> <p>2 wouldn't have what happened.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Why is the FBI deciding who TSC contracts</p> <p>5 with?</p> <p>6 MS. KONKOLY: Objection. Calls for</p> <p>7 speculation. Objection as to this being outside of</p> <p>8 the scope of the designated topics for this</p> <p>9 deposition. Objection. Calls for a legal</p> <p>10 conclusion. You can answer if you know.</p> <p>11 THE WITNESS: The TSC is administered by</p> <p>12 the FBI. And the TSC is not large enough to provide</p> <p>13 all of those different services.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. How many employees does TSC have?</p> <p>16 <b>A. Do you mean government, contract, both?</b></p> <p>17 Q. So you said that there is about 300</p> <p>18 contractors that provide services to the Terror</p> <p>19 Screening Center, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. So let's put them to the side. How many</p> <p>22 individuals does the Terror Screening Center employ?</p>	<p>264</p> <p>1 agency indicates. If they are an FBI employee, the</p> <p>2 FBI. If they were a DHS employee, it would come</p> <p>3 from whatever DHS component that they worked for.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Right. But Charles Kable is not on</p> <p>6 assignment. You are not on assignment?</p> <p>7 <b>A. Uh-huh.</b></p> <p>8 Q. You know, you are a Terror Screening</p> <p>9 Center employee, correct?</p> <p>10 <b>A. My check says FBI.</b></p> <p>11 Q. So for Terror Screening Center employees,</p> <p>12 their checks say FBI?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Charles Kable's check says?</p> <p>15 <b>A. Would say FBI.</b></p> <p>16 Q. Would say FBI. The persons at the Terror</p> <p>17 Screening Center that accept nominations of U.S.</p> <p>18 persons to the TSDB, do their checks as well say FBI</p> <p>19 on them?</p> <p>20 <b>A. If they are FBI employees.</b></p> <p>21 Q. So there are some persons who accept</p> <p>22 nominations of U.S. -- I am going to start again. I</p>

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<p style="text-align: right;">265</p> <p>1 am not going to. I am actually going to change 2 directions. Do STOPSO contractors have access to 3 TSDB information that regards U.S. persons in the 4 TSDB?</p> <p>5 MS. KONKOLY: Objection. Vague. 6 Objection insofar as the answer would call for 7 information protected by the law enforcement 8 privilege. You can answer if you can.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Do Sotera employees - do Sotera 12 contractors have access to TSDB information 13 regarding U.S. persons on the TSDB there?</p> <p>14 MS. KONKOLY: Objection. Vague. 15 Objection insofar as the answer calls for 16 information protected by the law enforcement 17 privilege. You can answer if you can.</p> <p>18 THE WITNESS: Some would, yes.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Does TSC have a view as to whether TSDB 21 listees like being in the Terror Screening Center 22 database?</p>	<p style="text-align: right;">267</p> <p>1 MS. KONKOLY: And let just put an 2 objection that that's vague and calls for 3 speculation. It is not within the scope of the 4 topics here. You can answer to the extent you feel 5 you can.</p> <p>6 THE WITNESS: In the first instance, I 7 think someone that is involved in terrorism who is 8 trying to further whatever their ultimate aim is 9 would be disheartened to know that their -- that 10 they had been detected and that they might need -- 11 you know, that their intentions might be thwarted by 12 virtue of the additional scrutiny that they may 13 receive.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Are there any other reasons why TSC 16 believes a person on the TSDB would not like being 17 in the TSDB?</p> <p>18 MS. KONKOLY: Objection. Vague. Calls 19 for speculation. Outside the scope. You can 20 answer.</p> <p>21 THE WITNESS: Well, it is hard for me to 22 know what is in other people's minds as to what the</p>
<p style="text-align: right;">266</p> <p>1 MS. KONKOLY: Objection. Vague. 2 Objection. Calls for speculation.</p> <p>3 THE WITNESS: I almost don't know how to 4 answer that. Do they like being in the TSDB? One, 5 I don't -- if they know.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Sure.</p> <p>8 <b>A. Then, sure, I could speculate that people</b> 9 <b>might not like that idea.</b></p> <p>10 Q. Why? Why does TSC believe that persons 11 in the TSDB would not like being in the TSDB?</p> <p>12 MS. KONKOLY: Objection. Vague. 13 Objection. Calls for speculation.</p> <p>14 THE WITNESS: I can think of a variety of 15 different reasons that people --</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. I would like all of the reasons. I would 18 like all of the variety of reasons you can think of?</p> <p>19 <b>A. Okay. Then how much time have we got</b> 20 <b>left?</b></p> <p>21 Q. We will spend 20 minutes.</p> <p>22 <b>A. So I would say --</b></p>	<p style="text-align: right;">268</p> <p>1 potential consequences of what they believe might or 2 might not happen by virtue of being watch listed. 3 They might believe that it subjects them to all 4 kinds of potential surveillance. They might believe 5 that, you know, they could actually be followed, 6 might be arrested. Just any number of -- boy, the 7 hypotheticals are endless of what people might 8 believe from that.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Is -- the inclusion standard for the TSDB 11 is that there is reasonable suspicion that you are a 12 known or suspected terrorist; is that correct?</p> <p>13 MS. KONKOLY: Objection. Vague. 14 Objection insofar as a complete answer would call 15 for information protected by the law enforcement 16 privilege. You can answer to the extent you can.</p> <p>17 THE WITNESS: The standard to be a known 18 or suspected terrorist is reasonable suspicion, 19 which would include being on the TSDB.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Is that a -- is that a positive 22 description of a person that they are reasonably</p>

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<p>269</p> <p>1 suspected of being a known or suspected for 2 terrorist? 3 MS. KONKOLY: Objection. Calls for 4 speculation. 5 THE WITNESS: I think it leaves open the 6 possibility that the information -- I take it, it's 7 exactly what it means. It means the person is 8 suspected. It is certainly not proof beyond a 9 reasonable doubt. It is not conclusive. 10 BY MR. ABBAS: 11 Q. But you disseminate it to 60 foreign 12 partners and more than 100,000 people inside the 13 United States? 14 MS. KONKOLY: Objection. Argumentative. 15 MR. ABBAS: That's fair. I withdraw the 16 question. 17 BY MR. ABBAS: 18 Q. Identify all the consequences that TSC is 19 aware of that are experienced by TSDB listees? 20 MS. KONKOLY: Objection. Calls for 21 speculation. Objection insofar as the answer 22 implicates information protected by law enforcement</p>	<p>271</p> <p>1 the TSDB. So we understand selectee, right? But, 2 you know, people believe the consequences of that 3 are. No fly what they believe the consequences of 4 that are. Those are subcomponents of the TSDB. But 5 your question was for being part of TSDB in general. 6 And so I would say that there are no automatic 7 consequences for being part of the TSDB in general. 8 BY MR. ABBAS: 9 Q. Does TSC have information about how 10 entities that receive TSDB information utilize the 11 disseminated TSDB information to the detriment of 12 TSDB listees? 13 MS. KONKOLY: Objection. Vague. 14 Objection insofar as that question calls for 15 information within the purview of other agencies or 16 would then -- that would be protected by the law 17 enforcement privilege or SSI. You can answer to the 18 extent that you can. 19 THE WITNESS: Well, I think it comes down 20 to what you mean by detriment. If you are a 21 terrorist, there are a lot of detriments to 22 intelligence being collected and reported back to</p>
<p>270</p> <p>1 privilege or SSI or any information within the 2 purview of another agency. You can answer to the 3 extent that you can. 4 THE WITNESS: The consequences of being 5 in TSDB, I don't know that any of them are 6 automatic. We pass it downstream to the partners, 7 and then they make that decision thereafter. So I 8 can't say that as a consequence of being in TSDB 9 there is necessarily any consequence other than 10 reporting. And in many cases, individuals listed in 11 TSDB would be unaware of that. 12 BY MR. ABBAS: 13 Q. I mean, you know, the screening agencies 14 clearly impose some type of consequence on persons 15 in the TSDB. And TSC has awareness of how some 16 agencies utilize TSDB information, correct? 17 MS. KONKOLY: Objection. 18 THE WITNESS: Sure. But for -- 19 MS. KONKOLY: Argumentative, not a 20 question. You can answer if you can. 21 THE WITNESS: But for different 22 components. But you are saying just being listed in</p>	<p>272</p> <p>1 investigative agencies and intelligence agencies. I 2 think in -- for many individuals, they are likely 3 unaware of any TSDB status. 4 BY MR. ABBAS: 5 Q. Is TSC aware of any consequences to 6 listees when their status as TSDB listees is 7 disseminated to other entities? 8 MS. KONKOLY: Objection. Vague. 9 Objection insofar as that calls for information 10 within the purview of other entities and/or insofar 11 as the answer calls for information protected by the 12 law enforcement privilege. You can answer to the 13 extent you can. And if I didn't say vague, I want 14 to make sure I got that. 15 THE WITNESS: Certainly we are aware that 16 TSA, for instance, subjects people to additional 17 screening for a variety of reasons, one of which 18 might be that they are listed on the selectee list. 19 And boarding is denied as a consequence sometimes 20 when it happens as a consequence of being on the 21 No-Fly List. So with respect to those two 22 components, yes, clearly State Department Customs</p>

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<p style="text-align: right;">273</p> <p>1 and Border Protection as they are doing their border</p> <p>2 authorities would obviously use the fact that</p> <p>3 somebody is listed in TSDB to make further inquiry.</p> <p>4 And they might make a decision based on that, that's</p> <p>5 triggered really by the pointer that somebody is</p> <p>6 included in TSDB.</p> <p>7 Q. Pointer. What do you mean pointer?</p> <p>8 <b>A. That mere presence in the TSDB is not</b></p> <p>9 <b>going to -- they will make their own determination</b></p> <p>10 <b>based on information. TSDB will help them find</b></p> <p>11 <b>information. But mere presence in the TSDB does not</b></p> <p>12 <b>have automatic consequences outside of the aviation</b></p> <p>13 <b>security context for anyone with a possible</b></p> <p>14 <b>exception of if they have an active warrant.</b></p> <p>15 Q. Does -- does TSC believe that USCIS, for</p> <p>16 instance, adjudicates immigration applications</p> <p>17 differently with regards to TSDB listees than it</p> <p>18 does with persons who are not TSDB listees?</p> <p>19 MS. KONKOLY: Objection insofar as that</p> <p>20 answer calls for information within the purview of</p> <p>21 CIS. You can answer to the extent that you know.</p> <p>22 But your answer does not bind any other agency.</p>	<p style="text-align: right;">275</p> <p>1 THE WITNESS: It is identifying</p> <p>2 information -- biographic and biometric information.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. And it does not contain any of the</p> <p>5 derogatory information that TSC relied upon to</p> <p>6 accept the nomination to the TSDB, correct?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. So when CBP -- does CBP -- so a secure</p> <p>9 flight is TSA's way of matching TSDB information to</p> <p>10 passenger information, correct?</p> <p>11 MS. KONKOLY: Objection insofar as that</p> <p>12 calls for information from the purview of TSA. You</p> <p>13 can answer to the extent you understand.</p> <p>14 THE WITNESS: I don't believe I can</p> <p>15 answer that one.</p> <p>16 MS. KONKOLY: Okay.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Does TSC understand -- is it TSC's</p> <p>19 understanding that CBP utilizes TSDB information to</p> <p>20 screen persons that cross U.S. borders?</p> <p>21 MS. KONKOLY: Objection insofar as that</p> <p>22 question calls for information within the purview of</p>
<p style="text-align: right;">274</p> <p>1 And, also, insofar as it would call for any law</p> <p>2 enforcement-protected information, you can answer to</p> <p>3 the extent you can.</p> <p>4 THE WITNESS: Fundamentally the answer is</p> <p>5 no. But I would go back to our effort to provide</p> <p>6 that common operating picture to make it easier for</p> <p>7 them to discover information that they need to have</p> <p>8 in order to make their -- to make their decisions</p> <p>9 per their authorities. I just want to clarify.</p> <p>10 Derogatory information isn't contained in TSDB.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Right. Yeah, that's my next question.</p> <p>13 So when TSC disseminates TSDB information to CBP, it</p> <p>14 is literally -- it is just a list of names, correct?</p> <p>15 MS. KONKOLY: Objection.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. I am sorry. Let me withdraw. It is a</p> <p>18 compilation of identifying information?</p> <p>19 MS. KONKOLY: Objection insofar as the</p> <p>20 answer calls for information protected by the law</p> <p>21 enforcement privilege. You can answer to the extent</p> <p>22 that you can.</p>	<p style="text-align: right;">276</p> <p>1 TSA. You can answer as to your understanding. The</p> <p>2 answer isn't binding.</p> <p>3 THE WITNESS: Yes, I believe that CBP</p> <p>4 uses TSDB information amongst lots of other</p> <p>5 information as they do border screening.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. I am sorry. Does CBP have any access to</p> <p>8 the derogatory information that was -- that TSC</p> <p>9 relied upon to accept a nomination to the TSDB?</p> <p>10 MS. KONKOLY: Objection insofar as that</p> <p>11 answer calls for information within protections of</p> <p>12 the law enforcement privilege and to the extent it</p> <p>13 calls for information within another agency's</p> <p>14 purview. You can answer to the extent you can.</p> <p>15 THE WITNESS: I believe they have access</p> <p>16 to the derogatory information.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. How? How does CBP have access to the</p> <p>19 derogatory information that TSC relies upon to</p> <p>20 accept nominations to the TSDB?</p> <p>21 MS. KONKOLY: Objection insofar as that</p> <p>22 answer calls for information protected by the law</p>

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<p style="text-align: right;">277</p> <p>1 enforcement privilege. Also, objection insofar as</p> <p>2 that answer calls for information within another</p> <p>3 agency's purview. You can answer to the extent that</p> <p>4 you can.</p> <p>5 THE WITNESS: I don't think I can answer</p> <p>6 that on their behalf.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. I mean, TSC has the database that holds</p> <p>9 the derogatory information that TSC relies upon to</p> <p>10 accept TSDB nominations, correct?</p> <p>11 MS. KONKOLY: Objection.</p> <p>12 Mischaracterizes prior testimony. Objection insofar</p> <p>13 as --</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I am going to withdraw it. Where does</p> <p>16 the derogatory information that underlies TSDB</p> <p>17 nominations live?</p> <p>18 MS. KONKOLY: Objection insofar as the</p> <p>19 answer to that question calls for information</p> <p>20 protected by law enforcement privilege. You can</p> <p>21 answer to the extent that you can. Also, vague.</p> <p>22 THE WITNESS: So we have talked about it</p>	<p style="text-align: right;">279</p> <p>1 information protected by the law enforcement</p> <p>2 privilege. You can answer to the extent that you</p> <p>3 can.</p> <p>4 THE WITNESS: I mean, Sentinel -- as the</p> <p>5 FBI manages its investigations there when the FBI</p> <p>6 does a nomination, it begins in Sentinel. It goes</p> <p>7 through the various processes. It ends up in</p> <p>8 TSDB -- you know, the biographic information. So in</p> <p>9 as much as Sentinel feeds nominations into TSDB, I</p> <p>10 suppose that would be true. But beyond that, I</p> <p>11 don't know if you have a question beyond that.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. No, I think that does that. Does TSC</p> <p>14 believe that the Terror Screening Center database is</p> <p>15 an effective counterterrorism program?</p> <p>16 MS. KONKOLY: Objection. Vague.</p> <p>17 Objection as to scope. Objection insofar as the</p> <p>18 answer calls for law enforcement-protected</p> <p>19 information or information within the purview of</p> <p>20 another agency. You can answer to the extent that</p> <p>21 you can.</p> <p>22 THE WITNESS: Yes.</p>
<p style="text-align: right;">278</p> <p>1 previously. In the case of international terrorism,</p> <p>2 it primarily or fully resides in TIDE. And in the</p> <p>3 context of domestic terrorism information, it would</p> <p>4 reside in Sentinel.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Right, Sentinel. And the FBI controls</p> <p>7 Sentinel, correct?</p> <p>8 <b>A. Sentinel is the FBI's case management</b></p> <p>9 <b>system, yes.</b></p> <p>10 Q. Does TSC always have access to the</p> <p>11 underlying derogatory information that regards</p> <p>12 nominations to the TSDB?</p> <p>13 MS. KONKOLY: Objection insofar as that</p> <p>14 answer calls for law enforcement privileged</p> <p>15 information. Objection. You can answer to the</p> <p>16 extent that you can.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Does TSC facilitate the dissemination of</p> <p>20 Sentinel information to other agencies?</p> <p>21 MS. KONKOLY: Objection. Vague.</p> <p>22 Objection insofar as the answer calls for</p>	<p style="text-align: right;">280</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. What is the basis of TSC's belief that</p> <p>3 the TSDB is an effective counterterrorism program?</p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 Objection insofar as the answer calls for</p> <p>6 information protected by the law enforcement</p> <p>7 privilege or information within the purview of</p> <p>8 another agency. You can answer to the extent that</p> <p>9 you can.</p> <p>10 THE WITNESS: So I think there are many</p> <p>11 layers to that. And that is, you know, a central</p> <p>12 question of my position. I think that you begin by</p> <p>13 looking at what doesn't happen, which is one way of</p> <p>14 evaluating. I think you also look at what does</p> <p>15 happen. And any time there is a terrorist event of</p> <p>16 any kind, then that will cause us to do an after</p> <p>17 action to determine if the individual or individuals</p> <p>18 involved in that were known to us, if they were</p> <p>19 watch-listed. If they were not, why not; what</p> <p>20 screening opportunities either way might we have</p> <p>21 had; what screening opportunities did we have, how</p> <p>22 were those handled. Was anything missed? Were</p>



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<p>281</p> <p>1 things properly disseminated? So there is that</p> <p>2 constant after action going on.</p> <p>3 Beyond that, we look to make sure that</p> <p>4 our data is current, accurate, thorough. So there</p> <p>5 are consistent audits. There are internal reviews.</p> <p>6 There is extensive oversight on the part of the</p> <p>7 inspector general from DOJ, the inspector general</p> <p>8 from Homeland Security, and other inspectors</p> <p>9 general.</p> <p>10 There is oversight by the Privacy</p> <p>11 Liberties Oversight Board. So there are constant</p> <p>12 audits that sometimes are the result of an event,</p> <p>13 sometimes are the result of a periodic review.</p> <p>14 There is the anecdotal feedback we get as we</p> <p>15 disseminate as to whether or not that information</p> <p>16 was useful to our screening partners and to</p> <p>17 investigative and intelligence agencies.</p> <p>18 MR. ABBAS: How much time do we have left</p> <p>19 before the tape ends?</p> <p>20 THE VIDEOGRAPHER: Three minutes.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. You said that TSC creates these</p>	<p>283</p> <p>1 you can.</p> <p>2 THE WITNESS: They are sometimes</p> <p>3 memorialized, not always. Sometimes via email and</p> <p>4 sometimes in significant cases there may be a</p> <p>5 written product that might be something we have done</p> <p>6 or something the FBI has done or something an IG or</p> <p>7 inspector general has done. And there have been</p> <p>8 reports published by the inspector general on such</p> <p>9 major events anyway.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. But, certainly, the Terror Screening</p> <p>12 Center has as its goal the inclusion of persons who</p> <p>13 intend to commit acts of terrorism, correct?</p> <p>14 A. Absolutely.</p> <p>15 Q. And in pursuit of that goal, TSC reflects</p> <p>16 on instances when perpetrators of terrorism are not</p> <p>17 in the TSDB, correct?</p> <p>18 A. Yes, together with our other partners.</p> <p>19 Q. How many perpetrators of terrorism inside</p> <p>20 the United States were not in the TSDB at the time</p> <p>21 they committed their act of terrorism?</p> <p>22 MS. KONKOLY: Objection. That question</p>
<p>282</p> <p>1 after-action reports?</p> <p>2 A. We conduct an after action. We review it</p> <p>3 after each incident. It doesn't necessarily result</p> <p>4 in a written report.</p> <p>5 Q. Every time there is an active terrorism</p> <p>6 inside the United States?</p> <p>7 A. And often internationally.</p> <p>8 Q. And often internationally. So let's do</p> <p>9 domestic first and then we will do international.</p> <p>10 Every time there is a domestic terrorism event, TSC</p> <p>11 reviews that incident to determine whether the</p> <p>12 perpetrator was in the TSDB or not, correct?</p> <p>13 A. That's the beginning of the analysis,</p> <p>14 yes.</p> <p>15 MR. ABBAS: Indiana, Arizona.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Do those after-action reports -- I am</p> <p>18 sorry. Do those after-action reviews get</p> <p>19 memorialized in documents?</p> <p>20 MS. KONKOLY: Objection insofar as the</p> <p>21 answer calls for any information protected by the</p> <p>22 law privilege. You can answer to the extent that</p>	<p>284</p> <p>1 calls for information protected by the law</p> <p>2 enforcement privilege and potentially the state</p> <p>3 secrets. I am going to instruct the witness not to</p> <p>4 answer that question.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does TSC know how many persons who have</p> <p>7 committed an act of terrorism inside the United</p> <p>8 States have not been in the TSDB at the time they</p> <p>9 committed their act of terrorism?</p> <p>10 MS. KONKOLY: Objection insofar as that</p> <p>11 answer calls for information protected by the law</p> <p>12 enforcement or the state secret privilege, but you</p> <p>13 can answer to the extent that you can.</p> <p>14 THE WITNESS: I don't know the answer off</p> <p>15 the top of my head, but the TSC could determine</p> <p>16 that.</p> <p>17 MR. ABBAS: Let's stop there. Can we</p> <p>18 take a 10-minute break? I am feeling winded.</p> <p>19 MS. KONKOLY: I would like to keep it as</p> <p>20 short as possible to get out of here as soon as</p> <p>21 possible.</p> <p>22 MR. ABBAS: Ten minutes is very</p>

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<p style="text-align: right;">285</p> <p>1 reasonable. How much time is -- how much on the</p> <p>2 record do we have?</p> <p>3 MS. KONKOLY: Can we say seven, so we</p> <p>4 actually mean 10?</p> <p>5 THE VIDEOGRAPHER: We are going off the</p> <p>6 record. The time is 4:03 p.m.</p> <p>7 (A recess was held.)</p> <p>8 THE VIDEOGRAPHER: Here begins tape</p> <p>9 number one for the videotaped deposition of Timothy</p> <p>10 Paul Groh. We have been on the record for five</p> <p>11 hours and six minutes. The time on the video</p> <p>12 monitor is 4:16 p.m. And we are back on the record.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Has the TSDB ever stopped an act of</p> <p>15 terrorism inside the United States?</p> <p>16 MS. KONKOLY: Objection. Calls for</p> <p>17 speculation. Objection insofar as that information</p> <p>18 -- answer calls for information protected by law</p> <p>19 enforcement or the state secret privilege.</p> <p>20 Objection. Vague. You can answer if you think you</p> <p>21 can.</p> <p>22 THE WITNESS: So I think it is impossible</p>	<p style="text-align: right;">287</p> <p>1 MS. KONKOLY: Objection. Calls for</p> <p>2 speculation. Objection insofar as that information</p> <p>3 -- the answer calls for information protected by law</p> <p>4 enforcement or potentially the state secrets</p> <p>5 privilege. If you think you can answer, you can.</p> <p>6 THE WITNESS: I think more than five.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. More than ten?</p> <p>9 MS. KONKOLY: Same set of objections.</p> <p>10 Vague. Calls for speculation insofar as it calls</p> <p>11 for information protected by the law enforcement or</p> <p>12 potentially the state secrets privilege. But you</p> <p>13 can answer if you can.</p> <p>14 THE WITNESS: Yeah, I don't think I can</p> <p>15 further answer that.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. More than 20.</p> <p>18 MS. KONKOLY: Same objections. Vague,</p> <p>19 calls for speculation. Calls for information</p> <p>20 protected by the law enforcement, potentially state</p> <p>21 secrets privileges. If you think you can answer,</p> <p>22 you can.</p>
<p style="text-align: right;">286</p> <p>1 for the TSDB alone to ever stop anything. That</p> <p>2 said, I do believe there are cases where the TSDB</p> <p>3 has led to information that wouldn't have been</p> <p>4 discovered but for the TSDB that has then stopped</p> <p>5 acts of terrorism in the United States.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. How many acts of terrorism inside the</p> <p>8 United States does TSC believe that the TSDB has</p> <p>9 prevented?</p> <p>10 MS. KONKOLY: Objection. Vague.</p> <p>11 Objection insofar as that question calls for</p> <p>12 information protected by the law enforcement or</p> <p>13 potentially state secret privileges. You can answer</p> <p>14 if you can.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. And I am asking for a number. That's all</p> <p>17 I am asking for.</p> <p>18 MS. KONKOLY: Same objections.</p> <p>19 THE WITNESS: The only thing I think I</p> <p>20 can say is multiple.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. More than five?</p>	<p style="text-align: right;">288</p> <p>1 THE WITNESS: Same.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. When you say that the TSDB has prevented</p> <p>4 multiple acts of terrorism inside the United States,</p> <p>5 in your head do you have specific instances of the</p> <p>6 TSDB stopping acts of terrorism inside the United</p> <p>7 States?</p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 Objection insofar as that calls for information</p> <p>10 protected by the law enforcement or potentially</p> <p>11 state secrets privileges. You can answer if you</p> <p>12 think you can.</p> <p>13 THE WITNESS: I do. And in particular</p> <p>14 cases, yes.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. How many particular cases are you</p> <p>17 specifically aware of that you are claiming the TSDB</p> <p>18 has stopped acts of terrorism inside the United</p> <p>19 States?</p> <p>20 MS. KONKOLY: Objection. Vague, calls</p> <p>21 for speculation. Objection. Asked and answered.</p> <p>22 Objection insofar as this answer calls for</p>

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<p style="text-align: right;">289</p> <p>1 information protected by the law enforcement 2 privilege or the state secrets privilege. If you 3 think there is something where you haven't already 4 said that is not privileged -- 5 THE WITNESS: I do not. 6 BY MR. ABBAS: 7 Q. And is it your testimony today that the 8 TSDB has stopped more than 20 acts of terrorism 9 inside the United States? 10 MS. KONKOLY: Same set of objections. 11 Asked and answered. Calls for speculation, vague. 12 Objection. Calls for information protected by the 13 law enforcement and potentially the state secrets 14 privilege. 15 THE WITNESS: I don't know why you would 16 think that I said that. I did not say that. 17 MS. KONKOLY: Mischaracterizes prior 18 testimony. 19 BY MR. ABBAS: 20 Q. If you do not believe that the Terror 21 Screening Center -- I am sorry. I think you must 22 have misunderstood my question. Is it the -- does</p>	<p style="text-align: right;">291</p> <p>1 <b>A. Yes, I understand. And I am saying that</b> 2 <b>I don't believe I can.</b> 3 MS. KONKOLY: And I want to interpose an 4 objection. 5 BY MR. ABBAS: 6 Q. Well, I will ask an easy question. Let 7 me ask an easy question. Has the Terror Screening 8 Center stopped more than a thousand acts of 9 terrorism inside the United States? 10 MS. KONKOLY: Objection. Calls for 11 speculation. Objection. Vague. Objection. Calls 12 for information within law enforcement and 13 potentially the state secrets privilege. If you 14 think you can answer -- 15 THE WITNESS: I don't believe I can 16 answer anything more than I already have. 17 BY MR. ABBAS: 18 Q. You don't know whether the terror 19 screening -- so TSC doesn't have a position as to 20 whether or not the Terror Screening Database has 21 stopped more than 1000 acts of terrorism inside the 22 United States?</p>
<p style="text-align: right;">290</p> <p>1 the Terror Screening Center believe that the TSDB 2 has stopped more than 20 acts of terrorism inside 3 the United States? 4 MS. KONKOLY: Objection. Asked and 5 answered. Objection. Vague, calls for speculation. 6 Objection. Calls for information protected by the 7 law enforcement privilege and potentially the state 8 secrets privilege. If you think there's -- 9 THE WITNESS: I don't think I can further 10 answer. 11 BY MR. ABBAS: 12 Q. So you have no -- you are not going to 13 tell me anything about the number of times you have 14 in your head when -- you said multiple. So that 15 means at least two times you believe that the TSDB 16 has stopped an act of terrorism inside the United 17 States, correct? 18 <b>A. I agree that I said multiple. And I</b> 19 <b>agree that multiple means more than two.</b> 20 Q. Okay. So I want to see like an upper -- 21 I think you see. I want to see like the upper 22 threshold.</p>	<p style="text-align: right;">292</p> <p>1 MS. KONKOLY: Objection. Asked and 2 answered. Objection. Argumentative. 3 BY MR. ABBAS: 4 Q. I am done. That's fine. But what's the 5 answer? 6 <b>A. That I'm not answering.</b> 7 MS. KONKOLY: Objection. I entered the 8 privileges. Same law enforcement and potentially 9 state secrets. 10 BY MR. ABBAS: 11 Q. Has there ever -- has TSC ever conducted 12 an assessment of the effectiveness of the Terror 13 Screening Center? 14 MS. KONKOLY: Objection. Vague. 15 Objection insofar as it calls for information 16 protected by law enforcement. You can answer to the 17 extent that you can. 18 THE WITNESS: As per my prior testimony, 19 I think that process is ongoing. And there have 20 been certainly other large-scale comprehensive 21 audits. I would just caution that it is necessary 22 to determine the effectiveness since the TSDB does</p>

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<p style="text-align: right;">293</p> <p>1 not by itself do anything. It is only in</p> <p>2 partnership with other agencies that those sort of</p> <p>3 determinations require a look across multiple</p> <p>4 agencies. Those kinds of broad assessments are</p> <p>5 being almost continuously conducted by the</p> <p>6 inspectors general and the GAO at the request of</p> <p>7 Congress.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. I am going to ask a question. We are now</p> <p>10 going to move to the DHS TRIP process and TSC's role</p> <p>11 in the DHS TRIP process. How are persons removed</p> <p>12 from the TSDB?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I'm sorry. Let me withdraw that</p> <p>16 question. Are there multiple ways in which a person</p> <p>17 listed in the TSDB can be removed from the TSDB?</p> <p>18 <b>A. I don't know if you mean that the process</b></p> <p>19 <b>could be started or that the actual removal is</b></p> <p>20 <b>accomplished.</b></p> <p>21 Q. Are there multiple ways in which a person</p> <p>22 can be ultimately removed from the TSDB?</p>	<p style="text-align: right;">295</p> <p>1 Q. But there are multiple ways at arriving</p> <p>2 at a removal action, correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Identify all the ways that we can arrive</p> <p>5 at a removal action?</p> <p>6 MS. KONKOLY: Objection.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Let me withdraw. Identify all the ways</p> <p>9 that TSC personnel issue a removal action.</p> <p>10 MS. KONKOLY: Objection. Vague. I would</p> <p>11 also just note that topic two expressly excluded the</p> <p>12 revised redress process for U.S. persons on the</p> <p>13 No-Fly List, so.</p> <p>14 MR. ABBAS: I am asking about the TSDB.</p> <p>15 I am not asking about the No-Fly List.</p> <p>16 MS. KONKOLY: Well, the TSDB includes the</p> <p>17 No-Fly List.</p> <p>18 By MR. ABBAS: I am asking about the</p> <p>19 TSDB. The topic includes the TSDB. And I'm asking</p> <p>20 about the TSDB.</p> <p>21 MS. KONKOLY: Well, I am objecting as to</p> <p>22 scope insofar as that implicates the No-Fly List,</p>
<p style="text-align: right;">294</p> <p>1 <b>A. Any removal is going to go through the</b></p> <p>2 <b>same technical process.</b></p> <p>3 Q. What is the technical process of removal</p> <p>4 of a person from the TSDB?</p> <p>5 MS. KONKOLY: Objection. Vague and</p> <p>6 objection insofar as this answer calls for</p> <p>7 information held by or equities possessed by other</p> <p>8 agencies.</p> <p>9 THE WITNESS: The Nominations Data</p> <p>10 Integrity Unit that handles nominations would</p> <p>11 process. Their analysts would go in and in their</p> <p>12 work flow with TSDB, they would enter a removal</p> <p>13 action. And no matter how we got to that point,</p> <p>14 that's the ultimate point at which that removal</p> <p>15 would occur.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. So the folks in NDIU would enter what's</p> <p>18 called a removal action?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. Is that like a form?</p> <p>21 <b>A. It is an electronic form. So electronic</b></p> <p>22 <b>work flow might be a better way to put it.</b></p>	<p style="text-align: right;">296</p> <p>1 which has been expressly excluded from this topic by</p> <p>2 the court's order. And I would instruct the witness</p> <p>3 not to answer questions that have to do with the</p> <p>4 revised redress process insofar as your answer</p> <p>5 implicates or could potentially implicate that</p> <p>6 revised process for U.S. persons on the No-Fly List.</p> <p>7 I am instructing you not to answer questions as to</p> <p>8 that piece of the process.</p> <p>9 THE WITNESS: I understand.</p> <p>10 MS. KONKOLY: You can answer the</p> <p>11 remaining portion of that question.</p> <p>12 THE WITNESS: So it is -- there could be,</p> <p>13 as I previously stated, a multitude. I would</p> <p>14 endeavor to give you the ones that I can think of</p> <p>15 with the caveat that wherever it makes sense to do a</p> <p>16 removal, then that's where we would do it. The</p> <p>17 simplest way is the original nominating agency</p> <p>18 request removal based on either new information,</p> <p>19 exculpatory information, or a retraction of the</p> <p>20 derogatory information. Then we would look at that,</p> <p>21 look at all the information out there and make a</p> <p>22 determination whether or not the person still meets</p>

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<p style="text-align: right;">297</p> <p>1 the appropriate standard. That would come from the</p> <p>2 nominating agency. It is possible as a result of an</p> <p>3 encounter that we would acquire new information.</p> <p>4 Again, it could be exculpatory. It could be</p> <p>5 information that refutes. It could be something</p> <p>6 that goes to the credibility of a source that would</p> <p>7 cause us to re-evaluate that and cause us to perform</p> <p>8 a removal.</p> <p>9 Q. Are nominating agencies obligated in some</p> <p>10 manner to provide TSC with exculpatory information</p> <p>11 regarding TSDB listees?</p> <p>12 MS. KONKOLY: Objection insofar as that</p> <p>13 calls for any information protected by the law</p> <p>14 enforcement privilege or any information within the</p> <p>15 purview of other equities belonging to other</p> <p>16 agencies. But you can answer so far as you can.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Let me rephrase the question. Does TSC</p> <p>19 require nominating agencies to provide TSC with</p> <p>20 exculpatory information regarding TSDB listees that</p> <p>21 the nominating agency learns of?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>	<p style="text-align: right;">299</p> <p>1 can -- basically, we will modify our records on our</p> <p>2 own if we find information out there that</p> <p>3 contradicts, refutes, or otherwise would cause us to</p> <p>4 modify a record. We want it to be thorough and</p> <p>5 accurate and current. And we have no interest in</p> <p>6 anybody being in TSDB who shouldn't be there.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Are there innocent people in the TSDB?</p> <p>9 MS. KONKOLY: Objection. Calls for</p> <p>10 speculation. Vague.</p> <p>11 THE WITNESS: There are no innocent</p> <p>12 people that I am specifically aware of that are in</p> <p>13 TSDB. Inasmuch as we find people that, again, those</p> <p>14 previous -- as soon as we find somebody that we no</p> <p>15 longer believe meets criteria, then we immediately</p> <p>16 remove them.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Does TSC keep track of which TSDB</p> <p>19 listees' entries have been supplemented with</p> <p>20 exculpatory information uncovered by any entity</p> <p>21 subsequent to the TSDB's placement in the TSDB?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>
<p style="text-align: right;">298</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. You require -- how do you enforce the</p> <p>4 requirement against nominating agencies that</p> <p>5 requires them to provide TSC with exculpatory</p> <p>6 information that the nominating agency finds about</p> <p>7 TSDB listees?</p> <p>8 MS. KONKOLY: Objection. Vague. You can</p> <p>9 answer.</p> <p>10 THE WITNESS: So you say require. I</p> <p>11 would go back to my previous testimony about -- it</p> <p>12 is the same as our expectation that they will</p> <p>13 provide nominations to us when they have</p> <p>14 information. I also have the expectation and</p> <p>15 agreement that they will provide exculpatory.</p> <p>16 To go to your question when, we conduct</p> <p>17 periodic reviews based on a number of factors.</p> <p>18 Periodic reviews are different kinds of reviews for</p> <p>19 different categories of records. Some are random</p> <p>20 reviews where we review derogatory. We review</p> <p>21 derogatory information in U.S. Government holdings,</p> <p>22 not just necessarily that's reported to us. And we</p>	<p style="text-align: right;">300</p> <p>1 Objection insofar as the answer calls for</p> <p>2 information protected by the law enforcement</p> <p>3 privilege. You can answer if you can.</p> <p>4 THE WITNESS: So if somebody is removed,</p> <p>5 they are removed. So they don't show up if you do a</p> <p>6 search as somebody that's been removed with the</p> <p>7 caveat that there is an audit history that only a</p> <p>8 very, very few individuals at TSC have access to.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. So TSC keeps a record of persons that</p> <p>11 have once been in the TSDB but are no longer in the</p> <p>12 TSDB, correct?</p> <p>13 A. It is necessary to do so, yes.</p> <p>14 Q. Why is it necessary to do so?</p> <p>15 MS. KONKOLY: Objection. Vague.</p> <p>16 Objection insofar as that answer calls for --</p> <p>17 MR. ABBAS: He said necessary. I am just</p> <p>18 asking --</p> <p>19 MS. KONKOLY: And the rationale may</p> <p>20 implicate privileged information protected by the</p> <p>21 law enforcement privilege and potentially state</p> <p>22 secrets in an individual case. You can answer to</p>

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<p>301</p> <p>1 the extent that you can.</p> <p>2 THE WITNESS: For instance, if somebody</p> <p>3 was then renominated, you would want to be able to</p> <p>4 have a flag that you had previously removed them.</p> <p>5 For instance, you could have circular reporting that</p> <p>6 came up to another agency -- another agency, based</p> <p>7 on the same original derog; nominate somebody we</p> <p>8 would want to be able to detect that so we don't</p> <p>9 accidentally re-watch list somebody that had</p> <p>10 previously been removed.</p> <p>11 Q. People listed on the Terror Screening</p> <p>12 Database have filed lawsuits against the Terror</p> <p>13 Screening Center, correct?</p> <p>14 <b>A. I am aware of that.</b></p> <p>15 Q. Including the 25 plaintiffs in this case,</p> <p>16 correct?</p> <p>17 MS. KONKOLY: Objection. Misleading</p> <p>18 insofar as that question implies that the 25</p> <p>19 plaintiffs are in the TSDB. And objection --</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Sure. That's fair. Question withdrawn.</p> <p>22 People who believe that they are in the TSDB have</p>	<p>303</p> <p>1 litigation.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. So litigation is a reason that TSC has</p> <p>4 utilized in the past to assess the sufficiency of</p> <p>5 the derogatory information relied upon to accept a</p> <p>6 TSDB nomination?</p> <p>7 MS. KONKOLY: Objection. Vague and</p> <p>8 mischaracterizes prior testimony.</p> <p>9 THE WITNESS: Yeah, absolutely is not a</p> <p>10 criteria for removal. For instance, in the scope of</p> <p>11 answering an interrogatory or preparing it,</p> <p>12 certainly if we come across for any reason,</p> <p>13 including that, a reason to believe that a record is</p> <p>14 not properly maintained or is no longer properly</p> <p>15 maintained, then we are -- regardless of any status,</p> <p>16 we are going to make the appropriate decision on</p> <p>17 that.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. So has litigation ever prompted TSC to</p> <p>20 reconsider a listee's status in the TSDB?</p> <p>21 MS. KONKOLY: Objection. Asked and</p> <p>22 answered.</p>
<p>302</p> <p>1 filed lawsuits against the Terror Screening Center,</p> <p>2 correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Does TSC annotate TSDB entries to reflect</p> <p>5 whether the listee is currently engaged in</p> <p>6 litigation against the Federal Government?</p> <p>7 <b>A. No.</b></p> <p>8 MS. KONKOLY: Objection. Vague.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Has TSC made any removal decisions in</p> <p>11 light of ongoing litigation against the TSC brought</p> <p>12 by persons who allege they are included in the TSDB?</p> <p>13 MS. KONKOLY: Objection vague. Objection</p> <p>14 insofar as the answer would indicate any information</p> <p>15 protected by law enforcement privilege. But you can</p> <p>16 answer if you can.</p> <p>17 THE WITNESS: Not because they filed --</p> <p>18 not because they filed litigation or I would say</p> <p>19 redress. Any reason that causes us to look at a</p> <p>20 record where we then find that it either -- that it</p> <p>21 does no longer meet criteria, we would remove at</p> <p>22 that point regardless of status of litigation or not</p>	<p>304</p> <p>1 THE WITNESS: I can't think of</p> <p>2 particular -- if you are talking about Federal</p> <p>3 Government litigation, no. If you are talking about</p> <p>4 redress, I would say yes.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. So federal litigation has never prompted</p> <p>7 TSC to revisit the priority of a placement in the</p> <p>8 TSDB?</p> <p>9 MS. KONKOLY: Objection. Vague and</p> <p>10 mischaracterizes prior testimony.</p> <p>11 THE WITNESS: I just -- I just can't</p> <p>12 think of a particular one. There is no reason why</p> <p>13 it would be different from redress. I just can't</p> <p>14 think of one.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. I don't understand. You can't think of</p> <p>17 one what?</p> <p>18 <b>A. Of a situation where pending formal</b></p> <p>19 <b>litigation has caused us to review a particular</b></p> <p>20 <b>record and in that review, we have decided that it</b></p> <p>21 <b>didn't meet the appropriate standards. I can think</b></p> <p>22 <b>of redress cases where in the course of reviewing --</b></p>

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<p style="text-align: right;">305</p> <p>1 reviewing something, we became aware of information</p> <p>2 that caused us to remove or modify a record. But</p> <p>3 there is no reason why those would be fundamentally</p> <p>4 different.</p> <p>5 Q. Sure. Could TSC remove someone from the</p> <p>6 TSDB prior to the conclusion of the DHS TRIP redress</p> <p>7 process?</p> <p>8 A. Yes. As I just testified, at any point</p> <p>9 if we become aware of that, then we are not going to</p> <p>10 wait for the process to terminate. Again, we want</p> <p>11 it to be current, accurate, and thorough. And if it</p> <p>12 no longer meets, it no longer meets regardless of</p> <p>13 any process.</p> <p>14 Q. So my understanding is that the TSA</p> <p>15 administrator has -- I guess that's no final</p> <p>16 specific -- who has final -- what is TSC's</p> <p>17 understanding of who has the final say as to whether</p> <p>18 a person on the selectee list's redress complaint</p> <p>19 results in a change in watch list status?</p> <p>20 MS. KONKOLY: Calls for a legal</p> <p>21 conclusion. You can answer.</p> <p>22 THE WITNESS: The TSA administrator.</p>	<p style="text-align: right;">307</p> <p>1 information. They will compare that against the</p> <p>2 standards and ultimately make either -- either</p> <p>3 decide if it's a TSDB status or recommend to the TSA</p> <p>4 administrator any appropriate changes to watch</p> <p>5 listing status for that person.</p> <p>6 Q. How does TSC Redress Unit personnel</p> <p>7 confirm the accuracy of information the nominating</p> <p>8 agency relied upon to submit the nomination?</p> <p>9 A. So they will review the derogatory</p> <p>10 information as it appears in those other two systems</p> <p>11 in Sentinel and/or TIDE.</p> <p>12 Q. So say they just review the face of the</p> <p>13 derogatory -- whatever the description is that the</p> <p>14 nominating agency provided in Sentinel.</p> <p>15 MS. KONKOLY: Okay. I just note that</p> <p>16 that was an interruption to his answer. He was not</p> <p>17 done. Your question mischaracterizes his testimony,</p> <p>18 which he was not finished giving. Objection. Vague</p> <p>19 and argumentative and potentially protected by</p> <p>20 attorney -- I am sorry. Not attorney/client</p> <p>21 privilege, but a law enforcement privilege. Let's</p> <p>22 rephrase. I think we can continue with --</p>
<p style="text-align: right;">306</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Okay. In that regards, whether it is the</p> <p>3 No-Fly List or the selectee list, the TSA</p> <p>4 administrator has the final say, correct?</p> <p>5 A. Yes.</p> <p>6 MS. KONKOLY: Objection. Vague.</p> <p>7 MR. ABBAS: Luckily we got that answer.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. TSC has a Redress Unit, correct?</p> <p>10 A. Yes.</p> <p>11 Q. How many people are in the Redress Unit?</p> <p>12 A. About half a dozen.</p> <p>13 Q. What do -- what does the TSC Redress Unit</p> <p>14 do?</p> <p>15 A. They receive redress. I think it is</p> <p>16 complaints from -- from DHS TRIP that DHS TRIP</p> <p>17 believes have an nexus to the TSDB. They then do a</p> <p>18 de novo review of those complaints. They go back to</p> <p>19 the beginning of the record wherever that started.</p> <p>20 They will contact the nominator to find out if the</p> <p>21 information originally provided is still current,</p> <p>22 check with them to see if there is any additional</p>	<p style="text-align: right;">308</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Sure. And I apologize Mr. Groh for</p> <p>3 interrupting. I am just trying to understand. This</p> <p>4 is all new to me. I mean, how is the derogatory</p> <p>5 information -- how does the -- how does the</p> <p>6 derogatory information appear to TSC Redress Unit</p> <p>7 employees?</p> <p>8 MS. KONKOLY: Wait. Can you repeat the</p> <p>9 question? I didn't hear that.</p> <p>10 MR. ABBAS: Sure. Could you read it</p> <p>11 back?</p> <p>12 (The record was read.)</p> <p>13 THE WITNESS: The same way it does to</p> <p>14 NDIU employees. They access TIDE or Sentinel and</p> <p>15 review whatever the original derogatory information</p> <p>16 was.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Is the derogatory -- does the like -- so</p> <p>19 if the FBI nominates someone, the derogatory</p> <p>20 information would be in Sentinel, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So it's like the FBI agent that nominates</p>

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<p>309</p> <p>1 a person to the TSDB, they will type information 2 into Sentinel that's viewable by NDIU and redress -- 3 TSC Redress Unit employees? 4 MS. KONKOLY: Objection insofar as that 5 calls for information in the purview of the FBI. 6 You can answer as to your understanding. 7 THE WITNESS: The -- yeah, there is a 8 nominations form that they will fill out. But there 9 is also basically the case file that that nomination 10 form is part of. And so, generally, they are going 11 to have access to that entire case file. 12 BY MR. ABBAS: 13 Q. Does TSC require NDIU employees to review 14 the entire case file prior to making a decision 15 regarding whether or not to remove a person from the 16 TSDB? 17 MS. KONKOLY: Objection insofar as that 18 calls for information protected by a law enforcement 19 privilege. You can answer if you can. 20 THE WITNESS: So it is a multi-step 21 process. If the agent nominates their supervisor, 22 we will approve. It then comes to a unit in the</p>	<p>311</p> <p>1 <b>A. Absolutely. That's the FBI's process.</b> 2 Q. HHS can nominate, correct. 3 MS. KONKOLY: Objection insofar as that 4 calls for law enforcement privilege. 5 BY MR. ABBAS: 6 Q. Whether HHS -- who are the agencies that 7 can submit nominations to the Terror Screening 8 Center? 9 MS. KONKOLY: And I am going to object on 10 the grounds -- 11 MR. ABBAS: I am going to withdraw the 12 question. I actually have the answer. 13 BY MR. ABBAS: 14 Q. So let me just go with the FBI. So are 15 there individual FBI agents that can just submit 16 nominations to the Terror Screening Center without 17 supervisory approval? 18 <b>A. No.</b> 19 Q. Are there variations in how FBI field 20 offices manage their agents submitting nominations 21 to the Terror Screening Center? 22 MS. KONKOLY: Objection that that</p>
<p>310</p> <p>1 Terror Screening Center Terrorist Review and 2 Examination Unit, otherwise known as TREX. They 3 will then review the nomination. They will 4 generally review the file. I don't know that -- I 5 can't speak for did they look at every one of 6 potentially hundreds of thousands serials. You 7 know, they are going to look at the derog. And they 8 are going to make an assessment based on that 9 information. That will then, if it's an 10 international terrorism nomination, go to the 11 National Counter-Terrorism Center. They will review 12 the nomination. Then it will come back to NDIU. 13 And they will as almost a third agency review the 14 nomination before it is then accepted in the TSDB. 15 Q. Or rejected? 16 <b>A. Or rejected. And it could have been</b> 17 <b>rejected in any of those previous steps, also.</b> 18 Q. Got it. So nomination -- so let me just 19 make sure I got it. You have a nominating agent? 20 <b>A. In the FBI, yes.</b> 21 Q. In the FBI. But there are other 22 nominating agencies, correct?</p>	<p>312</p> <p>1 information calls for information within the purview 2 of the FBI. You can testify as to your 3 understanding. Also objection insofar as it calls 4 for information protected by the law enforcement 5 privilege. 6 THE WITNESS: It is a standardized 7 process across the FBI. 8 BY MR. ABBAS: 9 Q. So there is no geographic variation in 10 the FBI nominating process? 11 MS. KONKOLY: Again, objection. 12 MR. ABBAS: Okay. He answered. 13 MS. KONKOLY: Okay. I am going to state 14 the objection that that called for information with 15 the purview of the FBI and that answer is not 16 binding on the agency. 17 BY MR. ABBAS: 18 Q. Has TSC ever questioned the voracity of 19 information that a nominating agency has provided to 20 the Terror Screening Center? 21 MS. KONKOLY: Objection as to scope. 22 Objection, vague. Calls for speculation;</p>



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<p style="text-align: right;">313</p> <p>1 potentially information within the law enforcement 2 privilege. You can answer to the extent that you 3 can.</p> <p>4 THE WITNESS: When you say voracity, I 5 mean, clearly from the fact that we reject 6 nominations, we disagree with the standard. Whether 7 or not that is the same as voracity, I am not sure. 8 I don't know -- exactly understand what you mean by 9 voracity.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. Well, you reject nominations for two 12 reasons, right? If it doesn't meet the minimum 13 substantive derogatory information. Is that what 14 you call it?</p> <p>15 <b>A. Yeah, you can. That's fine. I</b> 16 <b>understand what that means.</b></p> <p>17 Q. The second reason is it doesn't meet the 18 minimum identifying information?</p> <p>19 <b>A. Basically, yes.</b></p> <p>20 Q. And you all don't keep track of how many 21 nominations are rejected because of a failure to 22 meet minimum identifying derogatory information</p>	<p style="text-align: right;">315</p> <p>1 THE WITNESS: I suspect that that answer 2 varies over time. I think there have been times in 3 history where it has been one. And I think there 4 have been times in history when it has been the 5 other. I couldn't tell you at this particular 6 moment which one is more common.</p> <p>7 MR. ABBAS: Indiana.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Does the Terror Screening Center 10 independently investigate derogatory information 11 provided to it in support of nominations to the 12 TSDB?</p> <p>13 MS. KONKOLY: Objection insofar as that 14 question calls for information protected by the law 15 enforcement privilege. You can answer if you can.</p> <p>16 THE WITNESS: So it depends on what you 17 mean by the word investigate. If what we -- yeah, 18 so I will let you tell me. What did you mean by the 19 word investigate?</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Do you make an independent determination 22 as to the truthfulness of the information that</p>
<p style="text-align: right;">314</p> <p>1 versus minimum substantive derogatory information, 2 correct?</p> <p>3 <b>A. No, it is not easily tracked.</b></p> <p>4 Q. Are you aware of nominations that have 5 been rejected because those nominations do not meet 6 the minimum substantive derogatory information?</p> <p>7 MS. KONKOLY: Objection insofar as it 8 calls for any information protected by law 9 enforcement privilege. You can answer it insofar as 10 you can.</p> <p>11 THE WITNESS: Yes, we do reject for that 12 reason.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Which reason is more common -- more 15 commonly a basis for nomination rejection -- a 16 failure to meet minimum substantive derogatory 17 information standards or a failure to meet minimum 18 identifying information?</p> <p>19 MS. KONKOLY: Objection insofar as it 20 calls for information pertaining to the law 21 enforcement privilege. You can answer insofar as 22 you can.</p>	<p style="text-align: right;">316</p> <p>1 nominating agencies provide to the TSC?</p> <p>2 MS. KONKOLY: Objection insofar as it 3 calls for any information protected by law 4 enforcement privilege. You can answer if you can.</p> <p>5 THE WITNESS: So certainly the TSC 6 doesn't go out into the field and interview people.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Okay.</p> <p>9 <b>A. That said, when we assess, we check all</b> 10 <b>the intelligence that's available to us. And if a</b> 11 <b>nominator were to provide us a piece of information</b> 12 <b>and we find another piece of information in our own</b> 13 <b>searches of intelligence holdings that contradicts</b> 14 <b>that, we would certainly take that into</b> 15 <b>consideration where we found exculpatory or</b> 16 <b>something that discredits the source or something</b> 17 <b>along those lines. And we make a totality of</b> 18 <b>circumstances determination as to whether or not the</b> 19 <b>person meets the standard.</b></p> <p>20 Q. Are persons on the selectee list who 21 apply for redress via DHS TRIP notified by TSC as to 22 what their status on the TSDB is?</p>

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<p>317</p> <p>1 <b>A. No.</b></p> <p>2 Q. Does TSC provide persons on the selectee</p> <p>3 list who have applied for redress via DHS TRIP with</p> <p>4 an opportunity to contest the derogatory information</p> <p>5 TSC relied upon to accept their nomination to the</p> <p>6 TSDB?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 THE WITNESS: They can certainly submit</p> <p>9 any information they would like to submit through</p> <p>10 the redress process and we will consider it.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. Does the Terror Screening Center identify</p> <p>13 the inclusion standard -- has the Terror Screening</p> <p>14 Center ever publicly identified the inclusion</p> <p>15 standard for the selectee list?</p> <p>16 <b>A. I don't believe so.</b></p> <p>17 Q. Are there people on Terror Screening</p> <p>18 Database who are not on the selectee list or the</p> <p>19 No-Fly List?</p> <p>20 MS. KONKOLY: Objection insofar as that</p> <p>21 question calls for any information implicated by law</p> <p>22 enforcement privilege or potentially state secrets.</p>	<p>319</p> <p>1 clear. Can you read back the last question?</p> <p>2 (The record was read back.)</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Is the -- now I remember. Is the</p> <p>5 selectee list inclusion standard more permissive or</p> <p>6 less permissive than the TSDB inclusion standard?</p> <p>7 MS. KONKOLY: I am going to issue the</p> <p>8 same objections and instructions. That might be</p> <p>9 something we can confer on and get back to you on</p> <p>10 after a break. But for the moment, I am going to</p> <p>11 stand on this. I would like to keep going.</p> <p>12 MR. ABBAS: No, I don't want to keep</p> <p>13 going. If you need to confer, I would like to get</p> <p>14 this question answered.</p> <p>15 MS. KONKOLY: Okay. Then let me just</p> <p>16 step out and confer for a moment.</p> <p>17 MR. ABBAS: Can we go off the record?</p> <p>18 THE VIDEOGRAPHER: We are going off the</p> <p>19 record. The time is 4:55 p.m.</p> <p>20 (A brief recess was held.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record. And we have been on the record for 5 hours</p>
<p>318</p> <p>1 I believe it has already been asked and answered.</p> <p>2 But you can answer if you can.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Is the selectee list inclusion standard</p> <p>6 more permissive or less permissive than the</p> <p>7 inclusion standard for the selectee -- let me start</p> <p>8 again. Is the selectee list inclusion standard more</p> <p>9 permissive or less permissive than the Terror</p> <p>10 Screening database's inclusion standard?</p> <p>11 MS. KONKOLY: I am going to object on the</p> <p>12 basis of SSI, also the law enforcement privilege.</p> <p>13 And on the basis of each of those privileges, I am</p> <p>14 going to instruct the witness not to answer.</p> <p>15 MR. ABBAS: How is the TSC's inclusion</p> <p>16 standard SSI, because it belongs to TSC? It doesn't</p> <p>17 belong to TSA. TSC can't call everything that it</p> <p>18 would like to call SSI. It has to make that</p> <p>19 information.</p> <p>20 MS. KONKOLY: The objection is on the</p> <p>21 record and it stands.</p> <p>22 MR. ABBAS: Let me just make sure it is</p>	<p>320</p> <p>1 and 44 minutes. And the time is 4:59 p.m.</p> <p>2 MS. KONKOLY: There was a pending</p> <p>3 question. Can we have that read back?</p> <p>4 (The record was read back.)</p> <p>5 MS. KONKOLY: I am going to object</p> <p>6 insofar as a comprehensive answer would call into</p> <p>7 play information protected by the law enforcement</p> <p>8 privilege, potentially state secrets, potentially</p> <p>9 SSI. However, you can answer.</p> <p>10 THE WITNESS: So the selectee criteria</p> <p>11 are inclusive of the standard -- the reasonable</p> <p>12 suspicion standard. And there are additional</p> <p>13 criteria beyond that. So it is a higher bar for my</p> <p>14 higher bar than your more permissive or less</p> <p>15 permissive language. So I would say a higher bar</p> <p>16 than the general TSDB standard.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. So there are persons in the TSDB who are</p> <p>19 not in the selectee list, but there are not persons</p> <p>20 on the selectee list who are not in the TSDB?</p> <p>21 <b>A. That is correct.</b></p> <p>22 Q. Okay. All right. Great. Does -- at any</p>

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<p style="text-align: right;">321</p> <p>1 time, does TSC inform TSDB listees -- at any time,</p> <p>2 does TSC inform selectee listees of the derogatory</p> <p>3 information that TSC relied upon to accept the</p> <p>4 listees' nomination to the selectee list?</p> <p><b>5 A. No, we do not.</b></p> <p>6 Q. Does the -- is the reasonable suspicion</p> <p>7 -- is what you call -- okay. So the TSDB reasonable</p> <p>8 -- I am sorry. The inclusion standard for -- let me</p> <p>9 get that. Is the -- does TSC provide notice to</p> <p>10 persons on the selectee list that they are on the</p> <p>11 selectee list at any time?</p> <p><b>12 A. No.</b></p> <p>13 Q. And I know I have asked this question. I</p> <p>14 am just asking it for foundation purposes. And I</p> <p>15 will ask a follow-up question. What is the</p> <p>16 inclusion standard for the TSDB?</p> <p>17 MS. KONKOLY: Objection. Calls for</p> <p>18 information protected by the law enforcement</p> <p>19 privilege, potentially SSI, potentially SSP, vague.</p> <p>20 MR. ABBAS: The inclusion standard for</p> <p>21 the TSDB?</p> <p>22 MS. KONKOLY: Oh, I'm sorry. I heard you</p>	<p style="text-align: right;">323</p> <p>1 bar than a preponderance of the evidence standard?</p> <p>2 MS. KONKOLY: Objection. Calls for a</p> <p>3 legal conclusion.</p> <p>4 THE WITNESS: I believe it is.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Does -- to satisfy the TSDB inclusion</p> <p>7 standard, must a person have engaged in criminal</p> <p>8 activity?</p> <p><b>9 A. No, not necessarily.</b></p> <p>10 Q. So lawful activity can be the basis of a</p> <p>11 person's inclusion in the TSDB?</p> <p>12 MS. KONKOLY: Objection. Misleading.</p> <p>13 Objection. Mischaracterizes prior testimony.</p> <p>14 MR. ABBAS: If I am wrong, tell me.</p> <p>15 MS. KONKOLY: Calls for a legal</p> <p>16 conclusion.</p> <p>17 THE WITNESS: Lawful inasmuch as it is</p> <p>18 not a chargeable offense. I think I can't give</p> <p>19 purchase to the word lawful in that case. I know</p> <p>20 that the person does not need to be chargeable to be</p> <p>21 in the TSDB. However, activities they are involved</p> <p>22 in could depending on how circumstances finally turn</p>
<p style="text-align: right;">322</p> <p>1 say selectee. I withdraw. I misheard the question.</p> <p>2 MR. ABBAS: Okay.</p> <p>3 THE WITNESS: It is generally what we</p> <p>4 refer to as the reasonable suspicion standard.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Okay. And I am going to spend probably</p> <p>7 like 30 minutes asking you questions about this</p> <p>8 standard. Why do you all call it a reasonable</p> <p>9 suspicion standard?</p> <p><b>10 A. I wasn't there when it was originally --</b></p> <p><b>11 you know -- so when it was originally -- what the</b></p> <p><b>12 rationale originally was when it was come up with, I</b></p> <p><b>13 don't know. I would say that as of sitting here</b></p> <p><b>14 right now, it is a quick explanation of that</b></p> <p><b>15 particular standard. There are more words behind</b></p> <p><b>16 it. But it is simply the term that we use to refer</b></p> <p><b>17 to what is a longer definition.</b></p> <p>18 Q. The -- to be included -- so is the TSDB</p> <p>19 inclusion standard a lower bar than a probable cause</p> <p>20 standard?</p> <p><b>21 A. Yes.</b></p> <p>22 Q. Is the TSDB inclusion standard a lower</p>	<p style="text-align: right;">324</p> <p>1 out end up being part of conduct that could</p> <p>2 eventually be determined to be unlawful through the</p> <p>3 course of investigation or depending on what the</p> <p>4 person chooses to do.</p> <p>5 Q. Does -- does there need to be reasonable</p> <p>6 suspicion of unlawful activity to include a person</p> <p>7 in the Terror Screening Center?</p> <p>8 MS. KONKOLY: Objection. Calls for a</p> <p>9 legal conclusion. You can answer.</p> <p>10 THE WITNESS: I am sorry. Can you repeat</p> <p>11 that?</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. Yeah. I will repeat it. Reasonable</p> <p>14 suspicion of what?</p> <p><b>15 A. Involvement in terrorist activities.</b></p> <p>16 Q. I am going to introduce Exhibit A.</p> <p>17 Exhibit A is the overview document.</p> <p><b>18 A. Okay.</b></p> <p>19 Q. I am not going to -- you are not -- we</p> <p>20 are not going to ask all about it. I just really</p> <p>21 want to go to page three of the section titled Watch</p> <p>22 Listing and Screening.</p>

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<p style="text-align: right;">325</p> <p><b>1 A. Okay.</b></p> <p>2 MR. ABBAS: I am sorry. It is like in</p> <p>3 support of -- I am sorry. We are going to go</p> <p>4 through some documents in a little bit. We need</p> <p>5 five minutes. Can we go off the record?</p> <p>6 THE VIDEOGRAPHER: We are going off the</p> <p>7 record. The time is 5:07 p.m.</p> <p>8 (A recess was held.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record. The time is 5:17 p.m. And we have been on</p> <p>11 the record for 5 hours and 51 minutes.</p> <p>12 MR. ABBAS: Five hours and 51 minutes?</p> <p>13 THE VIDEOGRAPHER: Correct.</p> <p>14 (Exhibit A, marked for identification.)</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. The document in front of you has been</p> <p>17 marked as Exhibit A. Are you familiar with this</p> <p>18 document?</p> <p><b>19 A. It appears to be what we could call a</b></p> <p><b>20 transparency document.</b></p> <p>21 Q. Who decided to create this document?</p> <p>22 MS. KONKOLY: Objection. Vague.</p>	<p style="text-align: right;">327</p> <p>1 publicly disseminated this document in any way?</p> <p>2 MS. KONKOLY: Objection insofar as that</p> <p>3 question calls for information within the purview of</p> <p>4 other agencies.</p> <p>5 THE WITNESS: I am not aware of a</p> <p>6 particular public release of this document.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Are you aware that this document has been</p> <p>9 provided to the plaintiffs in response to</p> <p>10 plaintiff's discovery requests?</p> <p><b>11 A. Yes.</b></p> <p>12 Q. Was this document prepared for the</p> <p>13 purposes of litigation?</p> <p>14 MS. KONKOLY: You can answer.</p> <p>15 THE WITNESS: It was prepared for many</p> <p>16 purposes, not to exclude litigation.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. Was one of the purposes, Exhibit A, the</p> <p>19 overview of the U.S. Government's watch listing</p> <p>20 process and procedures? Is one of the purposes of</p> <p>21 this -- is one of the reasons this document was</p> <p>22 created for purposes of use in this litigation?</p>
<p style="text-align: right;">326</p> <p>1 THE WITNESS: The Watch Listing Advisory</p> <p>2 Council.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. What I suspected. Why did the Watch</p> <p>5 Listing Advisory Council decide to create this</p> <p>6 document?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 Objection insofar as an answer would call for law</p> <p>9 enforcement sensitive information. You can answer</p> <p>10 to the extent you can.</p> <p>11 THE WITNESS: Because we had -- it is a</p> <p>12 -- the watch listing community, the watch listing</p> <p>13 enterprise is broad. And we wanted to -- because</p> <p>14 there are so many, as you see, privileges and other</p> <p>15 information-sharing restrictions related to what we</p> <p>16 do, we thought it was important to agree on things</p> <p>17 that we could provide in an unclassified public</p> <p>18 setting about what we do.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Have you disseminated -- I'm sorry. Has</p> <p>21 the Terror Screening Center or any of the member</p> <p>22 agencies of the Watch Listing Advisory Council</p>	<p style="text-align: right;">328</p> <p>1 MS. KONKOLY: Objection insofar as it</p> <p>2 calls for information in the purview of other</p> <p>3 agencies. You can answer.</p> <p>4 THE WITNESS: You mean for this</p> <p>5 particular lawsuit?</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Yes.</p> <p><b>8 A. No, not in particular for this lawsuit.</b></p> <p>9 Q. Was this document created for general</p> <p>10 litigation purposes?</p> <p>11 MS. KONKOLY: Objection insofar as it</p> <p>12 calls for information in the purview of other</p> <p>13 agencies and a legal conclusion.</p> <p>14 THE WITNESS: It was -- as I said before,</p> <p>15 it was created to provide agencies with the</p> <p>16 information as so much of what we do is interrelated</p> <p>17 and interlocked with other agencies. It was created</p> <p>18 -- and the process of creating this took some time.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. How long? How long did it take to create</p> <p>21 this document?</p> <p><b>22 A. At least six months, maybe as much as a</b></p>

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<p>329</p> <p>1 year.</p> <p>2 Q. When was this document created?</p> <p>3 A. My recollection is it was probably</p> <p>4 finalized at the end of the last calendar year.</p> <p>5 Q. Was -- was the creation of this document</p> <p>6 communicated in a statement of conclusions that the</p> <p>7 Watch Listing Advisory Council issued?</p> <p>8 MS. KONKOLY: Objection insofar as that</p> <p>9 would call for any law enforcement sensitive</p> <p>10 information. You can answer if you can.</p> <p>11 THE WITNESS: I would expect the</p> <p>12 discussion about this document would appear in those</p> <p>13 statements of conclusion.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. Great. I would like you to turn to page</p> <p>16 four. Oh, Arizona. So the top paragraph of page</p> <p>17 four describes the reasonable suspicion standard.</p> <p>18 Can you just review that top paragraph. I have some</p> <p>19 questions about that. Let me know when you have</p> <p>20 finished reviewing that paragraph.</p> <p>21 A. (Witness reading.)</p> <p>22 Q. Oh, you are done?</p>	<p>331</p> <p>1 So you see in the third line where it says</p> <p>2 reasonable suspicion that the individuals engaged,</p> <p>3 has been engaged, or intends to engage in conduct</p> <p>4 constituting in preparation for, in aid, or</p> <p>5 furtherance of, or related to terrorism and/or</p> <p>6 terrorism activities, correct?</p> <p>7 A. Yes.</p> <p>8 Q. So it is reasonable suspicion of a</p> <p>9 variety of different things, correct?</p> <p>10 A. Yes.</p> <p>11 Q. One of those things is pretty easy to</p> <p>12 understand. Reasonable suspicion that the</p> <p>13 individual is now engaged in terrorism or terrorist</p> <p>14 activities?</p> <p>15 A. Yes.</p> <p>16 Q. That's straightforward. Engaging in</p> <p>17 terrorist and terrorism activities is a crime,</p> <p>18 correct?</p> <p>19 MS. KONKOLY: Objection. Calls for a</p> <p>20 legal conclusion.</p> <p>21 MR. ABBAS: He is the deputy director of</p> <p>22 the Terror Screen Center.</p>
<p>330</p> <p>1 A. Yes.</p> <p>2 Q. So it is my understanding that this</p> <p>3 paragraph -- this first paragraph on page four of</p> <p>4 Exhibit A elaborates on the meaning of the</p> <p>5 reasonable suspicion standard that you have referred</p> <p>6 to as the TSDB inclusion standard, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And it identifies what -- as to what the</p> <p>9 reasonable suspicion is of; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the TSDB inclusion standard is a</p> <p>12 reasonable suspicion of -- is a reasonable suspicion</p> <p>13 that the individual is engaged in conduct</p> <p>14 constituting terrorism or terrorism activities,</p> <p>15 correct? That would -- reasonable suspicion of that</p> <p>16 would satisfy the TSDB inclusion standard, correct?</p> <p>17 MS. KONKOLY: Objection. Calls for a</p> <p>18 legal conclusion. The document speaks for itself.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: So I am sorry.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Let me just try it again. That was bad.</p>	<p>332</p> <p>1 MS. KONKOLY: Okay. He can answer.</p> <p>2 THE WITNESS: You know, I don't think</p> <p>3 there is any federal statute that says that. So if</p> <p>4 you are going to -- you know, I think the elements</p> <p>5 of crime are much more particularized than that.</p> <p>6 Now, I think they generally will -- might, but you</p> <p>7 are not in a charging document for probable cause.</p> <p>8 You are going to have be more specific.</p> <p>9 Q. Is it the Terror Screening Center's view</p> <p>10 that individuals engaged in terrorism or terrorist</p> <p>11 activities are engaged in criminal activity?</p> <p>12 MS. KONKOLY: Objection. Calls for a</p> <p>13 legal conclusion. You can answer.</p> <p>14 THE WITNESS: So there is no federal</p> <p>15 criminal statute that is that brief. The federal</p> <p>16 criminal statutes have elements that you have to</p> <p>17 meet the elements.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. So what does this --</p> <p>20 A. And your description does not -- does not</p> <p>21 give the elements of any particular federal crime</p> <p>22 that I am aware.</p>

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<p>333</p> <p>1 Q. So what does terrorism mean in this</p> <p>2 paragraph. In paragraph -- in the first paragraph</p> <p>3 on page four, what does terrorism or terrorist</p> <p>4 activities mean?</p> <p>5 <b>A. Terrorist activities are going to be --</b></p> <p>6 Q. Let me withdraw the question.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. Does the Terror Screening Center define</p> <p>9 the terms terrorism and/or terrorist activities in</p> <p>10 any material that it possesses?</p> <p>11 MS. KONKOLY: I am going to object</p> <p>12 insofar as that question implicates information</p> <p>13 protected by law enforcement or potentially state</p> <p>14 secrets privilege. You can answer to the extent</p> <p>15 that you can.</p> <p>16 THE WITNESS: This -- this paragraph</p> <p>17 cites to the standard that we apply. The actual</p> <p>18 application of this in practice is the subject of</p> <p>19 training materials of other -- of other things that</p> <p>20 analysts use to where we train the analysts in order</p> <p>21 to apply the standard.</p> <p>22 BY MR. ABBAS:</p>	<p>335</p> <p>1 <b>reasonable suspicion standard.</b></p> <p>2 Q. Got it. Okay. So you agree that the</p> <p>3 first paragraph of page four of Exhibit A defines</p> <p>4 the reasonable suspicion standard of the TSDB,</p> <p>5 correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Is there -- within the reasonable -- the</p> <p>8 definition of reasonable suspicion standard of the</p> <p>9 TSDB, there appears the phrase, quote, terrorism and</p> <p>10 or terrorist activities, unquote. Did you see that</p> <p>11 part of the reasonable suspicion standard</p> <p>12 definition?</p> <p>13 <b>A. I do.</b></p> <p>14 Q. Is the phrase terrorism and/or terrorist</p> <p>15 activities defined by TSC in any documents that it</p> <p>16 has?</p> <p>17 MS. KONKOLY: Objection insofar as it has</p> <p>18 -- well, let me assert the objection. Objection</p> <p>19 insofar as that question calls for information</p> <p>20 protected by law enforcement privilege, potentially</p> <p>21 state secrets privilege. If you think you can</p> <p>22 answer, you can. If you would like to consult, we</p>
<p>334</p> <p>1 Q. Does TSC define the phrase terrorism</p> <p>2 and/or terrorist activities as it appears on page</p> <p>3 four of Exhibit A in any materials?</p> <p>4 MS. KONKOLY: Objection insofar as that</p> <p>5 question calls for information protected by the law</p> <p>6 enforcement and potentially state secrets privilege.</p> <p>7 You can answer to the extent that you can.</p> <p>8 THE WITNESS: There is no definition</p> <p>9 other than this definition that defines those words.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. What definition are you referring to?</p> <p>12 <b>A. The one on the page that you just read.</b></p> <p>13 Q. I don't see a definition of terrorism and</p> <p>14 or terrorist activities on page four of Exhibit A.</p> <p>15 MS. KONKOLY: Objection. Argumentative.</p> <p>16 Objection. Not a question.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. You are right. I withdraw it. Can you</p> <p>19 identify what definition of terrorism and/or</p> <p>20 terrorist activities you are the referring to on</p> <p>21 page four of Exhibit A?</p> <p>22 <b>A. I am referring to the definition of the</b></p>	<p>336</p> <p>1 can do that.</p> <p>2 THE WITNESS: I can't think of a place</p> <p>3 where that is further defined. In our previous</p> <p>4 conversation, though, you were trying to equate that</p> <p>5 to a criminal charge. And I object to equating the</p> <p>6 language here to the elements of something that we</p> <p>7 found in the United States code.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Duly noted. Does the -- does the Terror</p> <p>10 Screening Center -- in any material that TSC</p> <p>11 possesses or is aware of, is the phrase conduct</p> <p>12 constituting defined by the Terror Screening Center?</p> <p>13 <b>A. No.</b></p> <p>14 Q. In any material that TSC maintains or is</p> <p>15 aware of, is "in preparation for" as it appears in</p> <p>16 that reasonable suspicion standard definition</p> <p>17 defined by TSC.</p> <p>18 MS. KONKOLY: Objection insofar as the</p> <p>19 question calls for any information protected by law</p> <p>20 enforcement other privileges. But you can answer to</p> <p>21 the extent that you can.</p> <p>22 THE WITNESS: Along this line of</p>

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<p>337</p> <p>1 questions, I think I would like to consult.</p> <p>2 MR. ABBAS: I am going to do it for every</p> <p>3 little kind of phrase in that. So if you guys want</p> <p>4 to do like a global consultation.</p> <p>5 MS. KONKOLY: Sure.</p> <p>6 THE VIDEOGRAPHER: We are going off the</p> <p>7 record. The time is 5:31 p.m.</p> <p>8 (A recess was held.)</p> <p>9 MS. KONKOLY: So the witness has a</p> <p>10 correction to make to some of the lines of</p> <p>11 questioning that we have just been engaged in?</p> <p>12 THE WITNESS: So indeed the standards --</p> <p>13 the different causes that you have identified within</p> <p>14 this, they are further defined in the Watch Listing</p> <p>15 Guidance. And then in the interrogatories, I made</p> <p>16 reference to the training materials, which I started</p> <p>17 to review to a few minutes ago for the NDIU analyst</p> <p>18 -- that two-week class in there. And that is then</p> <p>19 part of those training materials that is applied to</p> <p>20 the actual application that I was talking about of</p> <p>21 the standards.</p> <p>22 So this is the standard. There is not</p>	<p>339</p> <p>1 MS. KONKOLY: I am going to object</p> <p>2 insofar as that answer would implicate law</p> <p>3 enforcement, potentially state secrets information.</p> <p>4 Also calls for a legal conclusion. You can answer</p> <p>5 to the extent that you can.</p> <p>6 THE WITNESS: Again, I don't think that I</p> <p>7 can further answer that without getting into</p> <p>8 privileged materials.</p> <p>9 MR. ABBAS: And what are the privileges?</p> <p>10 MS. KONKOLY: I said law enforcement and</p> <p>11 potential state secrets.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. What does Terror Screening Center</p> <p>14 consider as conduct in aid of terrorism and/or</p> <p>15 terrorist activities?</p> <p>16 MS. KONKOLY: I am going to again object.</p> <p>17 It calls for a legal conclusion. But, also, insofar</p> <p>18 as it calls for information protected by the law</p> <p>19 enforcement privilege and potentially the state</p> <p>20 secrets privilege. You can answer if you can.</p> <p>21 THE WITNESS: I feel the same.</p> <p>22 BY MR. ABBAS:</p>
<p>338</p> <p>1 another standard. But to further break down the</p> <p>2 practical application of these standards is found in</p> <p>3 the guidance and the training materials for each one</p> <p>4 of those clauses.</p> <p>5 Q. What is conduct constituting -- what's --</p> <p>6 what does TSC consider conduct constituting</p> <p>7 terrorism and/or terrorist activities?</p> <p>8 MS. KONKOLY: And I am going to object on</p> <p>9 the basis of the answer implicating law enforcement</p> <p>10 sensitive information. Also calling for a legal</p> <p>11 conclusion. You can answer to the extent that you</p> <p>12 can.</p> <p>13 THE WITNESS: I think without getting</p> <p>14 into the guidance itself that's privileged, I think</p> <p>15 the words have to stand for themselves generally. I</p> <p>16 think it is a -- well, no, I will just leave it at</p> <p>17 that.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. What is conduct in preparation for</p> <p>20 terrorism? I'm sorry. What does TSC consider</p> <p>21 conduct in preparation for terrorism and/or</p> <p>22 terrorist activities?</p>	<p>340</p> <p>1 Q. How do you feel?</p> <p>2 <b>A. That I can't answer further beyond what's</b></p> <p>3 <b>on this page without getting into privileged</b></p> <p>4 <b>materials. And, quite candidly, that's why this is</b></p> <p>5 <b>what's on this page.</b></p> <p>6 Q. What does TSC consider as conduct in</p> <p>7 furtherance of terrorism and/or terrorist</p> <p>8 activities?</p> <p>9 MS. KONKOLY: Again, I object that it</p> <p>10 calls for a legal conclusion. Object on the basis</p> <p>11 that an answer would call for information protected</p> <p>12 by the law enforcement privilege and potentially</p> <p>13 state secrets privilege. If you think you can</p> <p>14 answer, you can.</p> <p>15 THE WITNESS: The same.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. Is learning Arabic in furtherance of</p> <p>18 terrorism and/or terrorist activities?</p> <p>19 MS. KONKOLY: Objection. Calls for</p> <p>20 speculation. Objection. Calls for a legal</p> <p>21 conclusion. Objection insofar as the answer would</p> <p>22 implicate law enforcement sensitive information.</p>

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<p style="text-align: right;">341</p> <p>1 You can answer that if you can.</p> <p>2 THE WITNESS: I think that would be as</p> <p>3 one of many factors. In context, I would say that</p> <p>4 by itself, no. But in context of additional</p> <p>5 factors, it could be relevant.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. So learning Arabic could be conduct in</p> <p>8 furtherance of terrorism and/or terrorist</p> <p>9 activities?</p> <p>10 MS. KONKOLY: Objection.</p> <p>11 Mischaracterizes prior testimony. Asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: Not by itself.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I know not by itself, but learning Arabic</p> <p>16 could be conduct in furtherance of terrorism and</p> <p>17 terrorist activities?</p> <p>18 MS. KONKOLY: Objection.</p> <p>19 Mischaracterizes --</p> <p>20 MR. ABBAS: I'm sorry. I am going to</p> <p>21 withdraw it. You are right. He answered it.</p> <p>22 BY MR. ABBAS:</p>	<p style="text-align: right;">343</p> <p>1 for legal information. I am asking how the TSC</p> <p>2 applies the standard that it has adopted for TSDB</p> <p>3 inclusion.</p> <p>4 MS. KONKOLY: And my objections are on</p> <p>5 the record. And they stand as does the instruction.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. If a person has a relative who is in the</p> <p>8 TSDB, can their association with that person be a</p> <p>9 basis of their inclusion in the FBI?</p> <p>10 MS. KONKOLY: Objection. Calls for</p> <p>11 speculation; potentially calls for a legal</p> <p>12 conclusion. Objection that that question calls for</p> <p>13 information protected by the law enforcement</p> <p>14 privilege, potentially state secrets. And I am</p> <p>15 going to again instruct the witness not to answer.</p> <p>16 MR. ABBAS: On what grounds are you going</p> <p>17 to instruct the witness not to answer?</p> <p>18 MS. KONKOLY: Law enforcement,</p> <p>19 potentially state secrets.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Is international travel conduct in</p> <p>22 furtherance of terrorism and/or terrorist</p>
<p style="text-align: right;">342</p> <p>1 Q. What is conduct related to -- I am sorry.</p> <p>2 What does TSC consider conduct related to terrorism</p> <p>3 and/or terrorist activities?</p> <p>4 MS. KONKOLY: Objection. Calls for a</p> <p>5 legal conclusion. Objection insofar as it</p> <p>6 implicates information protected by the law</p> <p>7 enforcement privilege or potentially the state</p> <p>8 secrets privilege. If you think you can answer, you</p> <p>9 can.</p> <p>10 THE WITNESS: I don't think I can answer</p> <p>11 that any further without getting into privileged</p> <p>12 information.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Is -- is having a relative who is under</p> <p>15 investigation for a terrorism-related reason conduct</p> <p>16 related to terrorism and/or terrorist activities?</p> <p>17 MS. KONKOLY: Objection. That calls for</p> <p>18 a legal conclusion and for speculation. It also</p> <p>19 calls for information protected by the law</p> <p>20 enforcement privilege, potentially state secrets. I</p> <p>21 am going to instruct the witness not to answer.</p> <p>22 MR. ABBAS: And, again, I am not asking</p>	<p style="text-align: right;">344</p> <p>1 activities?</p> <p>2 MS. KONKOLY: Objection. Calls for</p> <p>3 speculation. Objection. Calls for legal conclusion</p> <p>4 insofar as it -- I am also objecting insofar as it</p> <p>5 implicates information protected by the law</p> <p>6 enforcement potentially state secrets privilege.</p> <p>7 You can answer if you think you can.</p> <p>8 THE WITNESS: I would again say that's a</p> <p>9 factor. And it is -- but it would be -- simply</p> <p>10 standing alone, the fact that somebody has travelled</p> <p>11 internationally, I don't think generally would. But</p> <p>12 you know, it is dependent upon a combination</p> <p>13 totality of the circumstances. And it could</p> <p>14 certainly be relevant.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Does the TSDB inclusion standard -- I am</p> <p>17 sorry. When a person is nominated to the TSDB, must</p> <p>18 the nomination include the prospective listee's date</p> <p>19 of birth?</p> <p>20 MS. KONKOLY: Objection insofar as that</p> <p>21 calls for law enforcement-privileged information.</p> <p>22 You can answer if you can.</p>



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<p style="text-align: right;">345</p> <p>1 THE WITNESS: It does not necessarily</p> <p>2 require the provision of a date of birth, although</p> <p>3 that will affect a screenability for various</p> <p>4 partners.</p> <p>5 BY MR. ABBAS:</p> <p>6 Q. Most TSDB entries include date of birth</p> <p>7 information --</p> <p>8 MS. KONKOLY: Objection. Calls for</p> <p>9 speculation.</p> <p>10 BY MR. ABBAS:</p> <p>11 Q. -- correct?</p> <p>12 <b>A. I don't know if I can actually -- I would</b></p> <p>13 <b>be speculating to say that that's true.</b></p> <p>14 Q. For U.S. persons, does the TSC require</p> <p>15 that the nominating agency identify the date of</p> <p>16 birth for the person that they are nominating to be</p> <p>17 included in the TSDB?</p> <p>18 MS. KONKOLY: Objection insofar as that</p> <p>19 calls for law enforcement sensitive privileged</p> <p>20 information. You can answer if you can.</p> <p>21 THE WITNESS: I think it is more likely</p> <p>22 that U.S. persons will have date of birth, but it is</p>	<p style="text-align: right;">347</p> <p>1 THE WITNESS: I don't think I can answer.</p> <p>2 I think that's privileged.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. You don't know whether or not there is</p> <p>5 children on the Terror Screen Database?</p> <p>6 MS. KONKOLY: Objection.</p> <p>7 Mischaracterizes his testimony. He said he can't</p> <p>8 answer without providing privileged information.</p> <p>9 MR. ABBAS: What's privileged? What's</p> <p>10 the -- what's privileged? I'm unclear.</p> <p>11 MS. KONKOLY: I asserted -- I asserted</p> <p>12 law enforcement, potentially state secret.</p> <p>13 MR. ABBAS: It is a state secret whether</p> <p>14 the Terror Screening Database --</p> <p>15 MS. KONKOLY: In an individual case,</p> <p>16 state secret could apply to an individual case. And</p> <p>17 I am asserting those privileges.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. How many children are in the Terror</p> <p>20 Screening Database?</p> <p>21 MS. KONKOLY: Objection. Calls for</p> <p>22 information implicating the law enforcement</p>
<p style="text-align: right;">346</p> <p>1 not required.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. So there are some U.S. persons who are</p> <p>4 included in the TSDB for which TSDB does not have</p> <p>5 any date of birth information in the TSDB?</p> <p>6 MS. KONKOLY: Objection insofar as that</p> <p>7 calls for information protected by law enforcement</p> <p>8 privilege. Speculation. You can answer if you can.</p> <p>9 THE WITNESS: I would speculate that it</p> <p>10 is possible that there is. I don't know of a</p> <p>11 particular one.</p> <p>12 BY MR. ABBAS:</p> <p>13 Q. For the individuals in the TSDB who have</p> <p>14 date of birth information, TSC obviously knows how</p> <p>15 old they are, correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Are there children on the TSDB? I am</p> <p>18 sorry. Are there children in the TSDB?</p> <p>19 MS. KONKOLY: Objection insofar as that</p> <p>20 calls for information protected by the law</p> <p>21 enforcement privilege, potentially state secrets.</p> <p>22 You can answer if you think you can.</p>	<p style="text-align: right;">348</p> <p>1 privilege, potentially the state secrets. And I</p> <p>2 will just instruct you not to answer that.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. Is there anything about the TSDB</p> <p>5 inclusion standards that constrains TSC's ability to</p> <p>6 list children in the TSDB?</p> <p>7 MS. KONKOLY: Objection insofar as that</p> <p>8 calls for information implicating the law</p> <p>9 enforcement privilege and potentially state secrets.</p> <p>10 You can answer if you can.</p> <p>11 THE WITNESS: I think the age of an</p> <p>12 individual just like those other factors we talked</p> <p>13 about is relevant. But no single factor is</p> <p>14 dispositive.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Does TSC provide its personnel guidance</p> <p>17 as to how to consider the age of a prospective TSDB</p> <p>18 listee when TSC personnel consider accepting or</p> <p>19 rejecting a nomination?</p> <p>20 MS. KONKOLY: Objection insofar as that</p> <p>21 calls for information protected by law enforcement</p> <p>22 privilege or potentially state secrets. If you</p>

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<p style="text-align: right;">349</p> <p>1 think you can answer, you can without waiving the 2 privilege. 3 THE WITNESS: I don't think I can answer 4 that in particular. 5 MR. ABBAS: Because of the law 6 enforcement privilege? 7 MS. KONKOLY: I have asserted the 8 privileges. They are on the record. 9 BY MR. ABBAS: 10 Q. Does TSC have any information that a 11 child has ever been placed in the TSDB? 12 MS. KONKOLY: Objection. Calls for 13 information implicated by the law enforcement 14 privilege and potentially the state secrets 15 privilege. I will instruct him not to answer. 16 BY MR. ABBAS: 17 Q. How about this? Does TSC have any 18 information that an adult has ever been placed in 19 the Terror Screening Database? 20 <b>A. Yes.</b> 21 Q. Has TSC placed an adult in the Terror 22 Screening Database?</p>	<p style="text-align: right;">351</p> <p>1 almost the very back, the second to last page. It 2 is page 63. Do you see your signature on page 63? 3 <b>A. I appear -- I see what appears to be my</b> 4 <b>signature.</b> 5 Q. That's your signature? 6 <b>A. Yes, it is.</b> 7 Q. And why is your signature on this 8 document? 9 MS. KONKOLY: Objection. Calls for a 10 legal conclusion. You can answer as to your 11 understanding. 12 THE WITNESS: As the same reason that I 13 am here. I am representing the TSC. And what is in 14 this -- in the response to the interrogatories is 15 true. 16 BY MR. ABBAS: 17 Q. So you participated in the -- you have 18 read these answers previously, correct? 19 <b>A. I have.</b> 20 Q. And they are accurate as far as you know? 21 <b>A. Yes.</b> 22 Q. I would like you to turn to page 14. Do</p>
<p style="text-align: right;">350</p> <p>1 <b>A. Yes.</b> 2 Q. Has the TSC placed a child in the Terror 3 Screening Database? 4 MS. KONKOLY: Objection. Calls for 5 information protected by law enforcement privilege 6 and potentially the state secrets privilege. I will 7 instruct you not to answer. 8 MR. ABBAS: I mean, we will find out that 9 later. 10 MS. KONKOLY: Okay. 11 (Exhibit B, marked for identification.) 12 BY MR. ABBAS: 13 Q. I am going to introduce Exhibit B. 14 Exhibit B is the defendant's answers to Plaintiff's 15 first set of interrogatories to TSC. Mr. Groh, we 16 are not going to go through the whole document. It 17 is a very, very long. And there is a lot of 18 gobbledygook at the beginning especially. I want to 19 -- 20 <b>A. I object to the description of this</b> 21 <b>gobbledygook.</b> 22 Q. Well, I want to take your attention to</p>	<p style="text-align: right;">352</p> <p>1 you see at the bottom half of 14, interrogatory 2 number six? 3 <b>A. I do.</b> 4 Q. So I am going to ask you to review 5 interrogatory number six. That's the interrogatory 6 in bold italics. And there is a section of 7 objections. I would say that's legal gobbledygook. 8 You are welcome to review it. The part that I am 9 going to ask you about is on page 16. It is the 10 response. But you can go ahead and review that 11 actual interrogatory, objections, and response. Let 12 me know when you are done, and then I am going to 13 ask you a few questions. 14 <b>A. (Witness reading.)</b> 15 Q. You are done. Okay. So I am looking at 16 page 16, the response paragraph. In your response, 17 you say that you export subsets of TSDB data to 18 partner agencies and foreigner partners for use by 19 those partners in a variety of lawful terrorist 20 screening functions. Do you see where I am? 21 <b>A. Yes.</b> 22 Q. What do you mean by lawful terrorist</p>

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<p>353</p> <p>1 screening functions?</p> <p>2 MS. KONKOLY: Objection. Calls for a</p> <p>3 legal conclusion.</p> <p>4 MR. ABBAS: It is his answer. I am</p> <p>5 asking him to explain his answer.</p> <p>6 MS. KONKOLY: You can answer.</p> <p>7 THE WITNESS: I mean that these are</p> <p>8 functions that the respective agencies are</p> <p>9 authorized to do by law as part of their mission</p> <p>10 that relate to -- have some nexus to terrorism and</p> <p>11 ultimately has been agreed to by the Watch Listing</p> <p>12 Advisory Council.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Well, I see how that could be applicable</p> <p>15 to partner agencies. Partner agencies you are</p> <p>16 referring to like domestic entities, correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And then you have like the conjunction</p> <p>19 "and" and the foreign partners. So I am imagining</p> <p>20 that's kind of dividing. You have partner agencies</p> <p>21 that are domestic. Is that what you meant by</p> <p>22 partner agencies?</p>	<p>355</p> <p>1 law enforcement privilege and potentially state</p> <p>2 secrets. Also calls for a legal conclusion. But</p> <p>3 you can answer to the extent that you can.</p> <p>4 THE WITNESS: I don't assert that by</p> <p>5 signing an agreement with us suddenly American law</p> <p>6 becomes applicable to a foreign partner if that's</p> <p>7 what you mean.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. So TSC does not require foreign partners</p> <p>10 to abide by U.S. law in how those foreign partners</p> <p>11 utilize TSDB information?</p> <p>12 MS. KONKOLY: Objection.</p> <p>13 Mischaracterizes prior testimony and objection so</p> <p>14 far as the answer calls for anything protected by</p> <p>15 law enforcement state secrets. You can answer to</p> <p>16 the extent that you can. Also calls for legal</p> <p>17 conclusion.</p> <p>18 THE WITNESS: I don't think it would be</p> <p>19 really possible for American law to apply to a</p> <p>20 foreign sovereign.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. So TSC does not require foreign partners</p>
<p>354</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And then foreign partners are --</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. -- the foreign governments?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. How -- who -- the foreign partners</p> <p>7 utilizing TSDB data for lawful terror screening</p> <p>8 functions. Is it TSC's testimony today that foreign</p> <p>9 partners are utilizing TSDB data in compliance with</p> <p>10 U.S. law?</p> <p>11 <b>A. No. Well, there may be applicable U.S.</b></p> <p>12 <b>laws. But I would say generally there are U.S. laws</b></p> <p>13 <b>that govern interactions with foreign governments.</b></p> <p>14 <b>So it certainly complied with those. I think beyond</b></p> <p>15 <b>that, that it would also, the conjunctive, both need</b></p> <p>16 <b>to -- well, no, I think it has to do with, yeah, our</b></p> <p>17 <b>laws that deal with dealing with foreign partners.</b></p> <p>18 Q. Does TSC require foreign partners to</p> <p>19 utilize TSDB information in accordance with U.S.</p> <p>20 law?</p> <p>21 MS. KONKOLY: Objection insofar as this</p> <p>22 answer calls for any information protected by the</p>	<p>356</p> <p>1 to utilize TSDB information in accordance with U.S.</p> <p>2 law, correct?</p> <p>3 MS. KONKOLY: Objection. Asked and</p> <p>4 answered.</p> <p>5 MR. ABBAS: Not asked and answered.</p> <p>6 MS. KONKOLY: Objection insofar as this</p> <p>7 indicates any information implicating the law</p> <p>8 enforcement and potentially the state secrets</p> <p>9 privilege. Objection. Calls for a legal conclusion</p> <p>10 and vague. You can answer to the extent that you</p> <p>11 can.</p> <p>12 THE WITNESS: I think there's a</p> <p>13 difference -- there's a distinction that I am trying</p> <p>14 to emphasize in my answer between what binds us to</p> <p>15 U.S. law and what binds a partner to U.S. law. So I</p> <p>16 am bound by United States law. A foreign sovereign</p> <p>17 would not be. They may by agreement choose to</p> <p>18 invoke certain -- certain things comparable to U.S.</p> <p>19 law. But, again, we cannot bind a foreign partner</p> <p>20 to U.S. law. That's simply the basis of</p> <p>21 international law.</p> <p>22 BY MR. ABBAS:</p>

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<p style="text-align: right;">357</p> <p>1 Q. I don't know what you mean when you say</p> <p>2 lawful terror screening functions. I understand</p> <p>3 what you mean when that regards the domestic partner</p> <p>4 or agencies. It is U.S. law?</p> <p>5 <b>A. Uh-huh.</b></p> <p>6 Q. But like you said, the Terror Screening</p> <p>7 Center does not -- is not in a position to require</p> <p>8 foreign partners to abide by U.S. law, correct?</p> <p>9 <b>A. We may in a particular agreement have an</b></p> <p>10 <b>agreement with the foreign partner to do things that</b></p> <p>11 <b>are consistent. But I do not think that that binds</b></p> <p>12 <b>the partner with the force of law.</b></p> <p>13 Q. Could a foreign partner use TSDB</p> <p>14 information in a way that if it were used in that</p> <p>15 manner in the U.S. would be illegal?</p> <p>16 MS. KONKOLY: Objection. Calls for</p> <p>17 speculation. Objection, vague. Objection insofar</p> <p>18 as that legal conclusion. And also object insofar</p> <p>19 as it calls for any information implicating the law</p> <p>20 enforcement, potentially the state secrets</p> <p>21 privilege. You can answer to the extent that you</p> <p>22 can.</p>	<p style="text-align: right;">359</p> <p>1 think you can answer.</p> <p>2 THE WITNESS: I think the agreements</p> <p>3 stand for themselves. I think the agreement is the</p> <p>4 agreement. The agreement is a text of what is in</p> <p>5 that agreement.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Are there -- are there agreements with</p> <p>8 foreign partners that do not require the foreign</p> <p>9 partner to utilize TSDB information in a way that is</p> <p>10 in compliance with U.S. law?</p> <p>11 MS. KONKOLY: Objection insofar as this</p> <p>12 calls for any information protected by the law</p> <p>13 enforcement privilege or the potential state secrets</p> <p>14 privilege. If you think there is a way you can</p> <p>15 answer without implicating those privileges, you</p> <p>16 can.</p> <p>17 THE WITNESS: I mean, the form of the</p> <p>18 question makes it very, very difficult to answer.</p> <p>19 We have obligations under U.S. law that we meet. If</p> <p>20 we reach an agreement with a foreign partner -- and</p> <p>21 I don't think every agreement the United States</p> <p>22 makes with a foreign partner obligates that foreign</p>
<p style="text-align: right;">358</p> <p>1 THE WITNESS: I guess I don't know how to</p> <p>2 answer that -- that question. I could imagine so</p> <p>3 many different situations with particular American</p> <p>4 legal constraints that may or may not apply in a</p> <p>5 foreign country. You could -- if you tried to</p> <p>6 overlap those two legal systems, I mean, you might</p> <p>7 not. It would be totally ineffectual, so.</p> <p>8 Q. So it sounds like foreign partners do not</p> <p>9 -- are not obligated to utilize TSDB information in</p> <p>10 a manner that complies with U.S. laws?</p> <p>11 MS. KONKOLY: Objection. Argumentative.</p> <p>12 Objective. Calls -- mischaracterizes his prior</p> <p>13 testimony.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I will withdraw the question. Is it true</p> <p>16 that TSC does not require foreign partners to</p> <p>17 utilize TSDB information in a manner that is</p> <p>18 consistent with U.S. law?</p> <p>19 MS. KONKOLY: Objection. Asked and</p> <p>20 answered. Objection insofar as this answer calls</p> <p>21 for information implicating the law enforcement</p> <p>22 privilege or the state secrets privilege. If you</p>	<p style="text-align: right;">360</p> <p>1 partner to follow American -- American law otherwise</p> <p>2 every place would be like America. So given all of</p> <p>3 that --</p> <p>4 Q. I --</p> <p>5 MS. KONKOLY: Okay. Let him finish.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. I'm sorry. If I cut you off, sorry, but</p> <p>8 I think we got what I was looking for.</p> <p>9 <b>A. Okay. Then I am done.</b></p> <p>10 Q. Okay. Let's -- do you see also on page</p> <p>11 16, do you see interrogatory number seven?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. It is a long one. And it culminates in</p> <p>14 an answer on page 22 that has that chart. Do you</p> <p>15 recall making or reviewing a chart as part of these</p> <p>16 interrogatory responses?</p> <p>17 <b>A. I do.</b></p> <p>18 Q. Are you familiar with the contents of</p> <p>19 this chart?</p> <p>20 <b>A. Generally, yes.</b></p> <p>21 Q. This chart identifies the number of total</p> <p>22 nominations that TSC received in -- from 2008 to</p>

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<p>1 2017 on a yearly basis, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. The total nominations refer to total</p> <p>4 nominations to the Terror Screening Database,</p> <p>5 correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And total adds refers to the number of</p> <p>8 new persons that were added to the Terror Screening</p> <p>9 Database, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And with regards to the rejections, you</p> <p>12 reject in every year less than 5 percent of the</p> <p>13 total nominations?</p> <p>14 MS. KONKOLY: Objection.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. So 95 percent of total nominations that</p> <p>17 were submitted to the Terror Screening Center from</p> <p>18 2008 to 2017 were accepted by the Terror Screening</p> <p>19 Center, correct?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 THE WITNESS: It would appear it is less</p> <p>22 than 5 percent, yes.</p>	<p>361</p> <p>1 Q. Ninety five percent is a very high</p> <p>2 number. It is close to a hundred, right?</p> <p>3 MS. KONKOLY: Objection. Argumentative.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. That might be a little bit argumentative.</p> <p>6 You know, 95 percent is a high number. That means</p> <p>7 that -- does TSC believe that it is receiving</p> <p>8 nominations that are credible and justified</p> <p>9 generally?</p> <p>10 <b>A. Absolutely, and especially given the fact</b></p> <p>11 <b>that they have been reviewed at multiple levels</b></p> <p>12 <b>before they get to us.</b></p> <p>13 Q. How many of the persons that have been in</p> <p>14 the TSDB have committed acts of terrorism inside the</p> <p>15 United States?</p> <p>16 MS. KONKOLY: Objection. That question</p> <p>17 calls for information implicating the law</p> <p>18 enforcement privilege and potentially state secrets</p> <p>19 in two instances. I am instructing the witness not</p> <p>20 to answer.</p> <p>21 BY MR. ABBAS:</p> <p>22 Q. Does TSC know how many persons that have</p>
<p>362</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Less than 5 percent of the nominations</p> <p>3 from 2008 to 2017 were rejected by the Terror</p> <p>4 Screening Center, correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. So the Terror Screening Center accepts</p> <p>7 more than 95 percent of all nominations it receives</p> <p>8 -- it has received from 2008 to 2017, correct?</p> <p>9 MS. KONKOLY: Objection. Vague and</p> <p>10 misleading.</p> <p>11 BY MR. ABBAS:</p> <p>12 Q. I am going to withdraw that question and</p> <p>13 just so I get it out cleanly. The Terror Screening</p> <p>14 Center accepted more than 95 percent of all</p> <p>15 nominations it received from 2008 to 2017, correct?</p> <p>16 MS. KONKOLY: I am just going to object.</p> <p>17 Vague and misleading. And make sure that we are</p> <p>18 referencing the definition of nominations that was</p> <p>19 provided in his answer in the context to this</p> <p>20 question.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. ABBAS:</p>	<p>363</p> <p>1 at any time been in the TSDB -- let me start all</p> <p>2 over. Does TSC know how many persons who have been</p> <p>3 placed at any time in the TSDB have been charged</p> <p>4 with a terrorism-related offense?</p> <p>5 MS. KONKOLY: Objection insofar as that</p> <p>6 would implicate any law enforcement-privileged</p> <p>7 information. You can answer without -- if you can</p> <p>8 answer, you can.</p> <p>9 THE WITNESS: It is not a data field that</p> <p>10 we collect. And I don't know if you are restricting</p> <p>11 it to domestically or are you also including</p> <p>12 foreign?</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. I am not restricting it.</p> <p>15 <b>A. Then it is fair to say no, we don't know.</b></p> <p>16 Q. Does -- with regards to the persons who</p> <p>17 have perpetrated acts of terrorism inside the United</p> <p>18 States, does TSC know how many of those persons have</p> <p>19 been in the TSDB at any time?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 Objection insofar as it calls for law</p> <p>22 enforcement-privileged information. If you can</p>

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<p>365</p> <p>1 answer, you can answer if you can.</p> <p>2 THE WITNESS: That information is not --</p> <p>3 again, it is not information we keep in the TSDB. I</p> <p>4 suppose with sufficient effort it could be</p> <p>5 discerned.</p> <p>6 BY MR. ABBAS:</p> <p>7 Q. Do you see in 2008 that more than 248,000</p> <p>8 nominations were received by TSC?</p> <p>9 A. I do.</p> <p>10 Q. And then in 2016 that number doubled to</p> <p>11 500 -- more than 518,000 total nominations. Do you</p> <p>12 see that?</p> <p>13 A. I do.</p> <p>14 Q. What happened between 2008 to 2016 that</p> <p>15 led to a doubling of the total nominations that TSC</p> <p>16 received?</p> <p>17 MS. KONKOLY: Objection. Vague. It is</p> <p>18 not clear to me that you are using this term</p> <p>19 consistently with the way it was expressly defined</p> <p>20 within this interrogatory. Further objection as to</p> <p>21 any information that -- I further object to the</p> <p>22 extent that the answer would call for information</p>	<p>367</p> <p>1 <b>nominating agencies?</b></p> <p>2 Q. Yes.</p> <p>3 MS. KONKOLY: Objection. That calls for</p> <p>4 information outside of TSC's purview. You can</p> <p>5 answer as to your understanding, but.</p> <p>6 THE WITNESS: Yeah, I don't know.</p> <p>7 BY MR. ABBAS:</p> <p>8 Q. Can foreign governments nominate persons</p> <p>9 to the TSDB?</p> <p>10 MS. KONKOLY: Objection insofar as that</p> <p>11 calls for any law enforcement or potentially state</p> <p>12 secrets-privileged information. You can answer. If</p> <p>13 you think you can answer without waiving, you can.</p> <p>14 THE WITNESS: Potentially pursuant to the</p> <p>15 agreement with that foreign government.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. And potentially. So I think it is clear</p> <p>18 in the overview document. Is it TSC that accepts</p> <p>19 nominations to the TSDB from foreign partners?</p> <p>20 MS. KONKOLY: Asked and answered. Same</p> <p>21 objections insofar as the answer calls for</p> <p>22 information protected by the law enforcement and</p>
<p>366</p> <p>1 protected by the law enforcement privilege. If you</p> <p>2 think you understand the question and can answer,</p> <p>3 you can.</p> <p>4 THE WITNESS: I think in very broad</p> <p>5 strokes -- so, one, you are referring to total</p> <p>6 nominations. Total -- which that can be</p> <p>7 modifications of record, of course, right, not adds</p> <p>8 when you are referring to those numbers. So that</p> <p>9 refers, in some cases, to TSDB being updated, right,</p> <p>10 as opposed to the adds, which I -- you know, which</p> <p>11 clearly have also gone up.</p> <p>12 But I just want to be specific here. But</p> <p>13 I think, you know, if you just look -- I think I can</p> <p>14 broadly say from a geopolitical standpoint that we</p> <p>15 have been engaged in a conflict with ISIS in that</p> <p>16 period of time as one of many global factors going</p> <p>17 on, but that being a very significant one.</p> <p>18 BY MR. ABBAS:</p> <p>19 Q. Has the number of persons that submit</p> <p>20 nominations to the Terror Screening Center gone up</p> <p>21 from 2008 to 2016?</p> <p>22 A. You mean the individual people in the</p>	<p>368</p> <p>1 potentially state secrets. You can answer if you</p> <p>2 can.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Has the number of -- I see the total</p> <p>6 adds. Does TSC know how many persons are in the</p> <p>7 TSDB right now?</p> <p>8 MS. KONKOLY: Objection. Calls for</p> <p>9 information protected by -- that was formulated,</p> <p>10 right, if they know. So I will just say so far as</p> <p>11 an answer, a complete answer would implicate any</p> <p>12 information protected by law enforcement or</p> <p>13 potentially state secrets privilege, but you can</p> <p>14 answer insofar as you can.</p> <p>15 THE WITNESS: Yes, we know how many</p> <p>16 people are in TSDB.</p> <p>17 BY MR. ABBAS:</p> <p>18 Q. How many people are in the TSDB?</p> <p>19 MS. KONKOLY: And there I am going to</p> <p>20 object on the basis of law enforcement and</p> <p>21 potentially state secrets privilege and instruct the</p> <p>22 witness not to answer.</p>

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<p>369</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Is there -- are there more than a million</p> <p>3 people in the TSDB?</p> <p>4 MS. KONKOLY: Objection. Calls for</p> <p>5 information protected by the law enforcement and</p> <p>6 potentially state secrets. And I am instructing the</p> <p>7 witness not to answer.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Are there more than five people in the</p> <p>10 TSDB? Are there -- I mean, some numerical</p> <p>11 information is appropriate.</p> <p>12 MS. KONKOLY: Okay. Objection insofar as</p> <p>13 this question calls for information protected by law</p> <p>14 enforcement or potentially state secrets. But</p> <p>15 insofar as there are public information that has</p> <p>16 been made available, the witness can answer.</p> <p>17 THE WITNESS: They are in excess of --</p> <p>18 there are over a million individuals in TSDB.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Has the increase in the number of</p> <p>21 individuals in the TSDB in TSC's view enhanced the</p> <p>22 effectiveness of the TSDB?</p>	<p>371</p> <p>1 Q. With regards to the more than one million</p> <p>2 persons in the TSDB, some of those -- some of those</p> <p>3 TSDB listees have never generated any encounter</p> <p>4 information, correct?</p> <p>5 A. Yes.</p> <p>6 MS. KONKOLY: Objection. Asked and</p> <p>7 answered.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Out of the million names in the TSDB --</p> <p>10 out of the more than million names in the TSDB, is</p> <p>11 there a lot of individuals who have not generated</p> <p>12 any encounter information?</p> <p>13 MS. KONKOLY: Objection. Vague.</p> <p>14 Objection. Calls for speculation. Objection</p> <p>15 insofar as it implicates any law</p> <p>16 enforcement-protected information. You can answer</p> <p>17 insofar as you can.</p> <p>18 THE WITNESS: Yes, there are a lot.</p> <p>19 BY MR. ABBAS:</p> <p>20 Q. Can you -- give me your best</p> <p>21 characterization of what amount of TSDB listees have</p> <p>22 never generated encounter information?</p>
<p>370</p> <p>1 MS. KONKOLY: Objection. Calls for</p> <p>2 speculation.</p> <p>3 BY MR. ABBAS:</p> <p>4 Q. It is TSC's view?</p> <p>5 A. Yes.</p> <p>6 Q. More names in the TSDB -- I will withdraw</p> <p>7 that question. Why? Why does TSC believe that more</p> <p>8 names in the TSDB furthers its counter-terrorism</p> <p>9 objectives?</p> <p>10 MS. KONKOLY: Objection. Calls for</p> <p>11 speculation. Objection insofar an answer would</p> <p>12 implicate any law enforcement-privileged</p> <p>13 information. You can answer insofar as you can.</p> <p>14 THE WITNESS: It is not more names by</p> <p>15 itself. It is more names that are appropriately</p> <p>16 nominated, I believe, enhance the TSDB. If -- we</p> <p>17 have no interest in it being bigger for the sake of</p> <p>18 it being bigger. It is bigger based on the</p> <p>19 intelligence that we have. The better that that</p> <p>20 represents the threat that is facing the nation and</p> <p>21 our partners, the more effective it will be.</p> <p>22 BY MR. ABBAS:</p>	<p>372</p> <p>1 MS. KONKOLY: Objection. Vague.</p> <p>2 Objection. Calls for speculation. Objection</p> <p>3 insofar as the answer would implicate any law</p> <p>4 enforcement-privileged information. You can answer</p> <p>5 to the extent that you can.</p> <p>6 THE WITNESS: Say by far the majority of</p> <p>7 people in TSDB have never generated an encounter.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. More than 75 percent?</p> <p>10 A. I think that's fair.</p> <p>11 Q. More than 90 percent?</p> <p>12 MS. KONKOLY: Objection. Calls for</p> <p>13 speculation.</p> <p>14 MR. ABBAS: If he knows. If you don't</p> <p>15 know, you can just stop --</p> <p>16 MS. KONKOLY: Objection insofar as any</p> <p>17 answer would implicate a law enforcement or</p> <p>18 potentially state secret privilege. If you think</p> <p>19 you can answer without waiving.</p> <p>20 THE WITNESS: I think I would say in</p> <p>21 excess of 90 percent. And I would want to cut it</p> <p>22 off there.</p>

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<p>373</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Okay. And so in excess of 90 percent of</p> <p>3 all TSDB listees have never generated any encounter</p> <p>4 information?</p> <p>5 <b>A. That's correct.</b></p> <p>6 MS. KONKOLY: Could we take a break? I</p> <p>7 could stand to stretch --</p> <p>8 MR. ABBAS: Yeah, I hear you. I'm not</p> <p>9 going to fight that.</p> <p>10 THE VIDEOGRAPHER: We are going off the</p> <p>11 record. The time is 6:12 p.m.</p> <p>12 (A recess was held.)</p> <p>13 THE VIDEOGRAPHER: We are back on the</p> <p>14 record. The time is 6:28 p.m. And we have been on</p> <p>15 the record for 6 hours and 43 minutes.</p> <p>16 BY MR. ABBAS:</p> <p>17 Q. What is the last publicly available total</p> <p>18 of TSDB listees?</p> <p>19 <b>A. I believe it was a million individuals in</b></p> <p>20 <b>2016 -- 2016.</b></p> <p>21 Q. A million total?</p> <p>22 <b>A. Yes.</b></p>	<p>375</p> <p>1 Q. How many layers of review are there for</p> <p>2 removal actions?</p> <p>3 <b>A. Two.</b></p> <p>4 Q. How many layers of review are there for</p> <p>5 decisions regarding TSDB nominations?</p> <p>6 MS. KONKOLY: Objection insofar as that</p> <p>7 would call for information protected by the law</p> <p>8 enforcement privilege. You can answer to the extent</p> <p>9 that you can.</p> <p>10 THE WITNESS: So I think that depends on</p> <p>11 the nomination. It is at least two. It may be more</p> <p>12 depending on particularized criteria pertaining to</p> <p>13 that nomination.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. How many persons does TSC remove from the</p> <p>16 TSDB on a yearly basis?</p> <p>17 MS. KONKOLY: Objection insofar as that</p> <p>18 calls for any information protected by the law</p> <p>19 enforcement privilege. You can answer to the extent</p> <p>20 that you can.</p> <p>21 THE WITNESS: I don't believe I can</p> <p>22 answer that.</p>
<p>374</p> <p>1 Q. How many TSC employees are authorized to</p> <p>2 remove persons from the TSDB?</p> <p>3 <b>A. To remove persons?</b></p> <p>4 MS. KONKOLY: Objection. Vague.</p> <p>5 THE WITNESS: All of those transactions</p> <p>6 require two individuals. So I would say at least 35</p> <p>7 individuals, but it may be as high as 90 on a</p> <p>8 removal. But -- and that would require two</p> <p>9 individuals. But the second one may have to be one</p> <p>10 of the 35, but it may be as high as 90. I am basing</p> <p>11 it on that level of authority within.</p> <p>12 MR. ABBAS: Indiana.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. How many TSC employees are authorized to</p> <p>15 accept or reject nominations to the TSDB?</p> <p>16 MS. KONKOLY: Objection. Vague.</p> <p>17 THE WITNESS: There are approximately 35</p> <p>18 individuals that would be the final -- there may be</p> <p>19 other people that looked at it before that. But to</p> <p>20 be the final approval before it actually goes into</p> <p>21 TSDB, approximately 35.</p> <p>22 BY MR. ABBAS:</p>	<p>376</p> <p>1 BY MR. ABBAS:</p> <p>2 Q. Does TSC know how many persons have been</p> <p>3 removed from the TSDB in 2017?</p> <p>4 MS. KONKOLY: Objection insofar as a</p> <p>5 complete answer would call for any information</p> <p>6 protected by the law enforcement privilege, but you</p> <p>7 can answer.</p> <p>8 THE WITNESS: Yes, TSC knows.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. Does TSC know how many individuals were</p> <p>11 removed from the TSDB in all calendar years?</p> <p>12 MS. KONKOLY: Same objection insofar as</p> <p>13 any answer would call for any law enforcement</p> <p>14 privileged information. But you can answer.</p> <p>15 THE WITNESS: I would say generally, yes.</p> <p>16 The only thing is you go way back to the beginning.</p> <p>17 And I can't attest to exactly when that capability</p> <p>18 came online. I believe it would be the case for</p> <p>19 everything represented on this chart.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. So for the last 10 years, TSC knows how</p> <p>22 many persons it has removed from the TSDB?</p>



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<p>377</p> <p>1 MS. KONKOLY: Objection.</p> <p>2 Mischaracterized his prior testimony.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. Can a -- can TSC commence a removal</p> <p>6 action at the end of the DHS TRIP redress process.</p> <p>7 I'm sorry. Let me rephrase that question. Does the</p> <p>8 DHS TRIP redress process -- is one of the outcomes</p> <p>9 -- is one of the possible outcomes of the DHS TRIP</p> <p>10 redress process a removal action?</p> <p>11 <b>A. Yes.</b></p> <p>12 MR. ABBAS: Well, I am pressing. How</p> <p>13 many more minutes do we have? Thirteen?</p> <p>14 THE VIDEOGRAPHER: Twelve.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. Does TSC commence all removal actions</p> <p>17 from the TSDB?</p> <p>18 MS. KONKOLY: Objection insofar as an</p> <p>19 answer would implicate any law enforcement</p> <p>20 privileged information. You can answer to the</p> <p>21 extent that you can.</p> <p>22 THE WITNESS: When you say commence --</p>	<p>379</p> <p>1 statistical information about TSDB. I would say it</p> <p>2 generally relates to performance, but I don't know</p> <p>3 in particular what you mean by that.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. You are an executive at TSC, correct?</p> <p>6 <b>A. I am.</b></p> <p>7 Q. Is there like an executive team that runs</p> <p>8 TSC?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What are the names of the positions that</p> <p>11 are part of the executive team of TSC?</p> <p>12 <b>A. I believe we are named as defendants. So</b></p> <p>13 <b>the three executives of TSC are myself, the director</b></p> <p>14 <b>Mr. Kable, and the principal deputy director Ms.</b></p> <p>15 <b>Burriesci.</b></p> <p>16 Q. And those three comprise the executive</p> <p>17 leader at the TSC?</p> <p>18 <b>A. They are three executives. We have other</b></p> <p>19 <b>people on our team that are not executives that work</b></p> <p>20 <b>in the front office.</b></p> <p>21 Q. Sure. Do the three of you review</p> <p>22 statistical information regarding the TSDB?</p>
<p>378</p> <p>1 MS. KONKOLY: And vague.</p> <p>2 BY MR. ABBAS:</p> <p>3 Q. That's fair. I will withdraw. Let me</p> <p>4 try to rephrase. Does -- TSC personnel are the ones</p> <p>5 that execute the key strokes to execute a removal</p> <p>6 action regarding a person that's listed in the TSDB?</p> <p>7 MS. KONKOLY: Objection. Vague.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. ABBAS:</p> <p>10 Q. And that removal action can come about as</p> <p>11 a result of TSC's auditing processes?</p> <p>12 <b>A. Yes, it could.</b></p> <p>13 Q. Does TSC keep statistical information</p> <p>14 regarding how -- the outcomes of its auditing</p> <p>15 process?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Does the executive leadership of TSC</p> <p>18 receive statistical information regarding the</p> <p>19 performance of the TSDB?</p> <p>20 MS. KONKOLY: Objection. Vague.</p> <p>21 THE WITNESS: You know, regarding the</p> <p>22 performance, we receive a lot of different</p>	<p>380</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. In what form -- what documents -- how</p> <p>3 does the statistical information regarding the TSDB</p> <p>4 get presented to the executive leadership team of</p> <p>5 TSC?</p> <p>6 <b>A. There are a number of different periodic</b></p> <p>7 <b>reports, everything from daily to weekly to monthly</b></p> <p>8 <b>reports that we look at in all different aspects of</b></p> <p>9 <b>our operations across TSDB and across encounters.</b></p> <p>10 Q. Arizona. Is there like a standard</p> <p>11 monthly report that you receive that includes the</p> <p>12 statistical information regarding the TSDB?</p> <p>13 <b>A. Probably multiple ones.</b></p> <p>14 Q. Do they -- are they titled?</p> <p>15 <b>A. Generally, yes.</b></p> <p>16 Q. What are the titles of the reports that</p> <p>17 TSC's executive leadership team receives that regard</p> <p>18 statistical information?</p> <p>19 MS. KONKOLY: Objection insofar as the</p> <p>20 answer would implicate any law enforcement sensitive</p> <p>21 information. You can answer to the extent that you</p> <p>22 can.</p>

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<p>381</p> <p>1 THE WITNESS: I think there is a TSDB</p> <p>2 monthly report. I think there is an encounter</p> <p>3 weekly report. There is a daily encounter report.</p> <p>4 I am trying to think of -- I believe Redress</p> <p>5 produces a report. It doesn't come to me, but it</p> <p>6 goes to Ms. Burriesci. I am sure there are more,</p> <p>7 but those are the ones that come to mind.</p> <p>8 BY MR. ABBAS:</p> <p>9 Q. Arizona. Is TSC involved in assisting</p> <p>10 federal agencies who utilize TSDB information for</p> <p>11 screening purposes and hoping those agencies confirm</p> <p>12 whether or not they have actually encountered a</p> <p>13 person in the TSDB?</p> <p>14 <b>A. Yes. We call that identity resolution.</b></p> <p>15 Q. How does TSC provide identity resolution</p> <p>16 support to federal agencies that utilize TSDB</p> <p>17 information?</p> <p>18 MS. KONKOLY: Objection insofar as the</p> <p>19 answer would implicate any law enforcement</p> <p>20 privileged information. But you can answer.</p> <p>21 THE WITNESS: The screening agency will</p> <p>22 contact us through any one of a number of variety of</p>	<p>383</p> <p>1 Q. And those people are called by the</p> <p>2 screening agencies?</p> <p>3 <b>A. In some cases.</b></p> <p>4 Q. In other cases, what happens?</p> <p>5 <b>A. It could be via some other platform. It</b></p> <p>6 <b>could be via email. It depends on the nature of the</b></p> <p>7 <b>enforcement.</b></p> <p>8 Q. TSA calls TSC, correct? I am sorry.</p> <p>9 When TSA has a potential TSDB listee that's trying</p> <p>10 to check into a flight, TSC receives a call from</p> <p>11 TSA.</p> <p>12 MS. KONKOLY: Objection insofar as that</p> <p>13 would implicate any SSI.</p> <p>14 BY MR. ABBAS:</p> <p>15 Q. I will ask the question differently. I</p> <p>16 will ask the question differently. Does TSC receive</p> <p>17 calls from TSA?</p> <p>18 <b>A. We are contacted by TSA. I don't believe</b></p> <p>19 <b>I can -- I can state exactly how they contact us.</b></p> <p>20 Q. Do they contact you by phone?</p> <p>21 MS. KONKOLY: Objection insofar as any</p> <p>22 answer would implicate SSI. If you think you can</p>
<p>382</p> <p>1 means. They provide the information that they</p> <p>2 believe that leads them to believe they may have</p> <p>3 encountered someone. And we then compare that to</p> <p>4 information in TSDB. And, in some cases, we compare</p> <p>5 that to information beyond TSDB. It may even come</p> <p>6 down to the original derogatory information. We may</p> <p>7 not be able to share that with the screening agency.</p> <p>8 But there may be information there that we can ask</p> <p>9 questions to rule in or rule out the individual</p> <p>10 that's been encountered. And we can make the</p> <p>11 decision as to whether or not we believe the person</p> <p>12 is identical to the person in the database.</p> <p>13 BY MR. ABBAS:</p> <p>14 Q. Are there -- is there dedicated TSC staff</p> <p>15 that assists recipients of TSDB information in</p> <p>16 identity resolution efforts?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. How many TSC persons provide recipients</p> <p>19 of TSDB information assistance with identity</p> <p>20 resolution efforts?</p> <p>21 <b>A. I think that unit has approximately 40</b></p> <p>22 <b>individuals.</b></p>	<p>384</p> <p>1 answer, you can.</p> <p>2 THE WITNESS: I don't believe I can</p> <p>3 further specify how they contact us.</p> <p>4 BY MR. ABBAS:</p> <p>5 Q. You testified that screening agencies</p> <p>6 contact -- let's talk about CBP. Does the CBP</p> <p>7 contact TSC by phone when it believes that it is</p> <p>8 screening a person who is in the TSDB?</p> <p>9 MS. KONKOLY: Objection insofar as that</p> <p>10 would call for law enforcement privileged</p> <p>11 information. You can answer if you think you can.</p> <p>12 THE WITNESS: Again, with CBP I don't</p> <p>13 think I can get into details about how they, in</p> <p>14 particular, contact us. But they do contact us.</p> <p>15 BY MR. ABBAS:</p> <p>16 Q. You can't tell me whether it was by phone</p> <p>17 or by email?</p> <p>18 MS. KONKOLY: Objection. Asked and</p> <p>19 answered.</p> <p>20 BY MR. ABBAS:</p> <p>21 Q. Why can't you tell me whether the TS --</p> <p>22 CBP contacts you by phone or by email?</p>

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<p>385</p> <p>1 MS. KONKOLY: Objection. Calls for law 2 enforcement -- 3 MR. ABBAS: I withdraw the question. 4 BY MR. ABBAS: 5 Q. Have you, Mr. Groh, as an executor of the 6 Terror Screening Center ever recommended raising the 7 bar for the TSDB's inclusion standard? 8 MS. KONKOLY: Objection. Vague. 9 Objection insofar as that would call for 10 deliberative process privileged information. You 11 can answer if you can. 12 THE WITNESS: I have not personally 13 advocated for changing the reasonable suspicion 14 standard. 15 BY MR. ABBAS: 16 Q. Are you aware of any prior members of 17 TSC's executive leadership team who have recommended 18 raising the bar for the TSDB's inclusion standard? 19 MS. KONKOLY: Objection. I think that 20 calls for deliberative process, protected 21 information. If you think there is a way to answer 22 without waiving that privilege, you can.</p>	<p>387</p> <p>1 record. The time is 6:44 p.m. 2 (At 6:44 p.m., the deposition was 3 concluded.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>
<p>386</p> <p>1 THE WITNESS: No, I don't think I could 2 waive that. Yeah, I think the privilege applies. 3 BY MR. ABBAS: 4 Q. Two minutes. Has Charles Kable -- and 5 that's the name of the Terror Screening Center, 6 right? 7 <b>A. It is Charles Kable.</b> 8 Q. Has Charles Kable ever recommended 9 raising the bar for the TSDB's inclusion standard? 10 MS. KONKOLY: I am going to object that 11 that appears to call for deliberative process 12 privileged information. If you think you can answer 13 without waiving that privilege, you can. 14 THE WITNESS: I do not. 15 BY MR. ABBAS: 16 Q. When is the next meeting of the Watch 17 Listing Advisory Council? 18 <b>A. Within the next two weeks.</b> 19 MR. ABBAS: Can I come? I think that's 20 it. We are done. Thanks so much. I really 21 appreciate it. 22 THE VIDEOGRAPHER: We are going off the</p>	<p>388</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 3 4 I, TIMOTHY P. GROH, do hereby acknowledge 5 that I have read and examined the foregoing 6 testimony and the same is a true, correct and 7 complete transcription of the testimony given by me 8 and any corrections appear on the attached errata 9 sheet signed by me. 10 11 _____ 12 (SIGNATURE) (DATE) 13 14 15 16 17 18 19 20 21 22</p>

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## 1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, Carla L. Andrews, the officer before  
4 whom the foregoing deposition was taken, do hereby  
5 certify that the witness, whose testimony appears in  
6 the foregoing deposition was duly sworn by the  
7 Notary, that the testimony of said witness was taken  
8 by me in stenotype and thereafter reduced to  
9 typewritten form under my supervision, that said  
10 deposition is a true record of the testimony given  
11 by said witness; that I am neither counsel for,  
12 related to, nor employed by any of the parties to  
13 the action in which this deposition was taken, and  
14 further that I am not a relative or employee of any  
15 attorney or counsel employed by the parties thereto  
16 nor financially or otherwise interested in the  
17 outcome of the action.

18

19



20

Carla L. Andrews, Notary Public

21

for the District of Columbia

22 My Commission Expires: January 14, 2019